TEXAS REGISTER

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Najwa Al-Mohamed

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 7, 2006

Appointed as Judge of the 110th Judicial District Court, Briscoe, Dickens, Floyd and Motley Counties, effective June 10, 2006, for a term until the next General Election and until his successor shall be duly elected and qualified, William Paul Smith of Silverton. Mr. Smith is replacing Judge Randy Hollums who retired.

Appointed as the District Attorney for the 46th Judicial District, Wilbarger, Hardeman and Foard Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Douglas C. Jeffrey, III of Vernon (replacing Dan Mike Bird who resigned).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2011, Joe K. Hearne of Dallas (replacing Elizabeth Routh of Corpus Christi whose term expired).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2011, Joe M. Gurecky of Rosenberg (replacing Terry Preuniger of Waco whose term expired).

Appointed to the Texas State Technical College System Board of Directors for a term to expire August 31, 2011, Rolf R. Haberecht of Dallas (replacing Don Elliott of Wharton whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2007, Odis Mack of Katy (Reappointment).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2007, Earl P. Erdmann of Midland (Reappointment).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2007, Michael T. Walsh of San Antonio (replacing Tom Burnette of Plano whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2009, Michael S. Ford of Amarillo (Reappointment).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2009, Troy Marceleño of Duncanville (Reappointment).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2009, Walter Kim Howard, M.D. of Longview (Reappointment).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2009, Nora Anita Janjan, M.D. of Navasota (replacing Susan Best of Dallas whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, Rosana G. Moreira of College Station (replacing Eugene Coleman of Anton who resigned).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, Bobby J. Haley of Pilot Point (replacing Phil Wentworth of Plano who resigned).

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, John Castle of Dallas.

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Lois Gamble of Austin.

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Francisco G. Zarate of Rio Grande City.

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Dr. Herschel C. Smith, Jr. of Houston.

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Tim Lambert of Lubbock.

Appointed to the Parental Advisory Committee, SB 6, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Delia Elisa Martinez Carian of San Antonio.

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2008, Tivy L. Whitlock of Mico (replacing Kris Gillespie of Austin who resigned).

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2012, Edward M. Racht, M.D. of Austin (Reappointment).

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2012, Pete Daniel Wolf of Windthorst (Reappointment).

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2012, Shirley Scholz of Ransom (Reappointment).

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2012, Jodie Harbert, III of Flower Mound (replacing Maxie Bishop of Grand Prairie who resigned).

Appointed to the Emergency Medical Services Advisory Committee for a term to expire January 1, 2012, Luis G. Fernandez, M.D. of Tyler (replacing Mario Segura of Roma whose term expired).

Appointed to the Texas Cancer Council for a term to expire February 1, 2010, Donald Spencer, M.D. of Austin (replacing Sylvia Fernandez of San Antonio who resigned).

Appointed to the Texas Cancer Council for a term to expire February 1, 2012, Fedricker Diane Barber of Richmond (Reappointment).

Appointed to the Interstate Oil and Gas Compact Commission for a term at the pleasure of the Governor, Dwight McClintock Moore of Spring.

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2008, Jan Kennady of New Braunfels (replacing Adam Cork).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2008, James W. Danner, Sr. of Hondo (replacing Robert Hancock).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2008, Eugene C. Smith of Kerrville (replacing Stephen Fine).

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2008, Lillian Lyssy of Karnes City (replacing Phillis Ender).

Appointed to the Golden Crescent Regional Review Committee for a term to expire January 1, 2008, Richard D. Tinney, Jr. of Goliad (replacing Harold Martin).

Appointed to the Golden Crescent Regional Review Committee for a term to expire January 1, 2008, Ted Long of Goliad (replacing Wayne Key).

Appointed to the Golden Crescent Regional Review Committee for a term to expire January 1, 2008, Gary Burns of Victoria (replacing George Klein).

Appointed to the Houston-Galveston Regional Review Committee for a term to expire January 1, 2008, Robert Daniel Pierce of Huntsville (replacing Mary Sue Timmerman).

Appointed to the South Plains Regional Review Committee for a term to expire January 1, 2008, Joe K. Hargrove of Crosbyton (replacing Joe Heflin).

Appointed to the South Plains Regional Review Committee for a term to expire January 1, 2008, James St.Clair of Morton (replacing Paul Westbrook).

Appointed to the South Plains Regional Review Committee for a term to expire January 1, 2008, James Roy Jones of Muleshoe (replacing Bruce Peel).

Rick Perry, Governor

TRD-200603244

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0496-GA

Requestor:

The Honorable Kurt Sistrunk

Galveston County Criminal District Attorney

600 59th Street, Suite 1001

Galveston, Texas 77551-4137

Re: Whether a governmental body may selectively admit members of the public into an executive session under the Open Meetings Act, chapter 551, Government Code (Request No. 0496-GA)

Briefs requested by July 7, 2006

RQ-0497-GA

Requestor:

Mr. Carl Reynolds

Administrative Director

Office of Court Administration

Post Office Box 12066

Austin, Texas 78711-2066

Re: Whether filing fees must be charged under both sections 133.151 and 133.152 of the Local Government Code (Request No. 0497-GA)

Briefs requested by July 7, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603249
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 13, 2006

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Opinions

Opinion No. GA-0435

The Honorable Charles A. Rosenthal, Jr.

Harris County District Attorney

1201 Franklin Street, Suite 600

Houston, Texas 77002

Re: Whether a reserve peace officer may wear his official uniform and display the insignia of an official law enforcement agency while working as a private security officer licensed by the Texas Private Security Board (RQ-0421-GA)

S U M M A R Y

A reserve peace officer who is employed by a sheriff, constable, a navigation district, or a municipal police department may not wear his official uniform and display the insignia of an official law enforcement agency while working as a private security officer licensed by the Texas Private Security Board.

Opinion No. GA-0436

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

Post Office Box 2850

Denton, Texas 76202

Re: Whether a county or district clerk is required to charge an administrative fee for the return of funds deposited with the clerk as a cash bail bond; reconsideration of Attorney General Opinion JC-0163 (1999) (RQ-0425-GA)

S U M M A R Y

A county or district clerk, pursuant to section 117.055 of the Local Government Code, is required to charge an administrative fee for the return of funds deposited with the clerk as a cash bail bond. Attorney General Opinion JC-0163 (1999) is affirmed.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603243
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 13, 2006

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-534 The Texas Ethics Commission has been asked to consider what is the effective date of an order issued under the Judicial Campaign Fairness Act (JCFA), section 253.165 of the Election Code? The facts at issue include the following: two judicial candidates subject to the JCFA each file a declaration of intent to comply with the voluntary expenditure limits. Both candidates exceed the expenditure limits although not simultaneously. One of the candidates notifies the executive director of the Texas Ethics Commission that the other candidate exceeded the expenditure limits. Notice was given only after both candidates had exceeded the limits.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code: (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200603209
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: June 12, 2006

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 6. HOSPITAL SERVICES

1 TAC §354.1077

The Texas Health and Human Services Commission (HHSC or Commission) proposes to amend §354.1077, Provider Participation Requirements, to require hospitals in eight urban service areas to comply with the reimbursement provisions and rate reductions of 1 TAC §355.8064 in order to participate in the Texas Medicaid Program.

Background and Justification

The 2006-07 General Appropriations Act (Article II, Special Provisions, Section 49, 79th Legislature, Regular Session, 2005) directs HHSC to achieve savings for services provided in eight urban service areas to aged, blind and disabled Medicaid clients. The eight urban service areas are Bexar, Dallas, Harris, El Paso, Lubbock, Nueces, Tarrant, and Travis.

Section 49 of the Act further directs HHSC to utilize cost-effective models to better manage the care of these clients and, at the same time, affect the identified savings. Finally, Section 49 directs HHSC, to the extent necessary, to adjust provider payments to ensure that the savings target is met. The Commission plans to meet these requirements, in part, by implementing a non-capitated Integrated Care Management (ICM) model in the Dallas and Tarrant service areas, and a partially capitated model with inpatient hospital services carved out in other urban service areas. The goal of both models will be to promote proper utilization and integration of acute care and long-term care services, while achieving the savings directed by the Legislature.

Concurrently with this rule, HHSC also is proposing in this issue of the *Texas Register* a reimbursement rule, 1 TAC §355.8064, which establishes the reimbursement methodologies and rates that will be applicable in the eight service areas and that are intended to achieve the directed savings. This amended §354.1077 requires hospitals to comply with the reimbursement provisions and rate reductions in 1 TAC §355.8064 in order to participate in the Texas Medicaid program.

Section-by-Section Summary

Section 354.1077(c) requires hospitals in the eight designated service areas to agree in writing to comply with the reimbursement provisions and rate reductions of 1 TAC §355.8064 in order to participate in the Texas Medicaid Program.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. The proposed rule will result in reductions in Medicaid revenues to local governments.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of enforcement of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local economies.

Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is the cost-effective managed medical care of the aged, blind, and disabled Medicaid population utilizing a health maintenance organization (HMO) hospital carve-out model or Integrated Care Management (ICM) model.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Questions about the content of this proposal may be directed to Scott Reasonover (telephone: (512) 491-1438; Fax: (512) 491-1998) in HHSC Rate Analysis for Hospital Acute Care Services. Written comments on the proposal may be submitted to Mr. Reasonover via facsimile, E-mail to Scott.Reasonover@hhsc.state.tx.us, or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1077. Provider Participation Requirements.

(a) A hospital must comply with each of the following requirements to qualify for participation as a hospital in the Texas Medical Assistance (Medicaid) Program. A hospital must:

(1) be licensed by the Texas Department of Health (department) as a general or special hospital, unless exempt from licensure by the appropriate licensing authority. This requirement does not apply to military hospitals providing inpatient emergency hospital services;

(2) be enrolled and participating in the Medicare Program as a hospital;

(3) sign a written provider agreement with the department or its designee to participate in the Medicaid program. The provider agreement requires the hospital to comply with the terms of the agreement and all requirements of the Medicaid program, including regulations, rules, handbooks, standards, and guidelines published by the department or its designee; and

(4) comply with the utilization review plan approved by the department or its designee.

(b) Effective December 1, 1991, the hospital must maintain policies and procedures regarding the following policies with respect to all adult individuals receiving inpatient services provided by the hospital:

(1) provide all adult individuals the following information regarding advance directives at the time of the individual's admission as an inpatient:

(A) the individual's rights under Texas law, whether statutory or as recognized by the courts of the state, to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (directive to physicians/living will or durable power of attorney for health care); and

(B) the hospital's policies respecting the implementation of such rights;

(2) document in the individual's medical record whether or not the individual has executed an advance directive;

(3) not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(4) ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives at facilities of the provider or organization; and

(5) provide for education for staff and the community on issues concerning advance directives.

(c) Notwithstanding subsections (a) and (b) of this section, effective September 1, 2006, a hospital in the Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant or Travis Service Areas will not be permitted to participate in the Texas Medical Assistance (Medicaid) Program unless the hospital agrees in writing to comply with the provisions of §355.8064 of this title (relating to Reimbursement Adjustment for Hospitals Providing Inpatient Services to SSI and SSI-Related Clients).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603150
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 424-6576

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8063

The Health and Human Services Commission (HHSC) proposes an amendment to §355.8063, concerning the reimbursement methodology for freestanding psychiatric inpatient services, in Chapter 355, Reimbursement Rates.

Background and Purpose

The purpose of the proposed amendment is to change the Medicaid reimbursement methodology for freestanding psychiatric inpatient hospitals. The proposed rule change will modify §355.8063(o) to add freestanding psychiatric inpatient facilities to those facilities that are reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) cost principles. These changes are being proposed as a result of the expiration of the Lone STAR Select II waiver program. The Lone STAR Select II waiver program offered participating freestanding psychiatric facilities a negotiated per diem reimbursement in lieu of cost-based reimbursement. With the expiration of the waiver, HHSC is converting previously participating facilities from per diem reimbursement to cost-based reimbursement, effective September 1, 2006. Converting the methodology for these facilities will allow HHSC to reimburse the providers based on their actual costs, which will more accurately reflect

the providers' true costs. This change is estimated to result in annual savings to the Medicaid program.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the amended rule is in effect there will be savings of over $3 million in general revenue and over $5 million in federal funds for each state fiscal year the rule is implemented. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, since providers will be reimbursed for their Medicaid inpatient psychiatric services based upon their actual costs of providing those services.

Cost to Persons and Effect on Local Economies

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that freestanding psychiatric facilities will be reimbursed based upon their actual costs of providing psychiatric inpatient services. In addition, the change in the reimbursement methodology will result in savings to the Medicaid program.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Alisa Jacquet (telephone: (512) 491-1432; FAX: (512) 491-1998) in HHSC Rate Analysis for Hospital Acute Care Services. Written comments on the proposal may be submitted to Ms. Jacquet via facsimile, E-mail to alisa.jacquet@hhsc.state.tx.us, or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The proposed amendment affects Texas Government Code, §§531.033 and 531.021(b) and Chapter 32 of the Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) - (n) (No change.)

(o) Reimbursement to in-state children's hospitals and freestanding psychiatric facilities. The HHSC or its designee reimburses in-state children's hospitals and freestanding psychiatric facilities under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA) except for the cost of direct graduate medical education (DGME). For cost reporting periods beginning on or after September 1, 2003, children's hospitals with allowable DGME costs as determined under TEFRA principles will receive a pro rata share of their annual TEFRA DGME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report. The HHSC or its designee establishes target rates and stipulates payments per discharge, incentives, and percentage of payments. The HHSC or its designee uses each hospital's 1987 final audited cost reporting period (fiscal year ending during calendar year 1987) as its target base period. The target base period for hospitals recognized by Medicare as children's hospitals after the implementation of this subsection is the hospital's first full 12-month cost reporting period occurring after its recognition by Medicare. The HHSC or its designee annually increases each hospital's target amount for the target base period by the cost-of-living index described in subsection (n) of this section. The HHSC or its designee selects a new target base period at least every three years. The HHSC or its designee bases interim payments to each hospital upon the interim rate derived from the hospital's most recent tentative or final Medicaid cost report settlement. If a Title XIX participating hospital is subsequently recognized by Medicare as a children's hospital after the implementation of this subsection, the hospital must submit written notification to the HHSC or its designee and include adequate documentation and claims data. Upon receipt of the written notification from the hospital, the HHSC or its designee reserves the right to take 90 days to convert the hospital's reimbursement to the reimbursement methodology described in this subsection.

(p) - (v) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603151

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 424-6576

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1 TAC §355.8064

The Texas Health and Human Services Commission (HHSC or Commission) proposes new §355.8064, to modify Medicaid reimbursement to hospitals in eight urban service areas for inpatient services to Supplemental Security Income (SSI) and SSI-related clients.

Background and Justification

The 2006-07 General Appropriations Act (Article II, Special Provisions, Section 49, 79th Legislature, Regular Session, 2005) directs HHSC to achieve savings for services provided to Medicaid aged, blind and disabled clients in the following service areas: Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis. The purpose of this rule is to achieve the directed savings.

Section 49 of the Act further directs HHSC to utilize cost-effective models to better manage the care of these clients and, at the same time, effect the identified savings. Finally, Section 49 directs HHSC, to the extent necessary, to adjust provider payments to ensure the savings target is met. The Commission plans to meet these requirements, in part, by implementing a non-capitated Integrated Care Management (ICM) model in the Dallas and Tarrant service areas, and a partially capitated model with inpatient hospital services carved out in other urban service areas. The goal of both models will be to promote proper utilization and integration of acute care and long-term care services, while achieving the savings directed by the Legislature.

Section-by-Section Summary

Subsection (a) establishes the reimbursement methodology and rates that will be used to pay hospitals in the Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis service areas for inpatient services. Subsection (b) applies an eight percent discount to hospital rates for inpatient services provided to SSI and SSI-related clients in service areas determined by HHSC. Subsection (c) applies additional percent discounts to be determined by HHSC to the hospitals' rates discounted under subsection (b). The additional discounts may vary by service area and hospital. These additional discounts will be applied to the reimbursement rates as needed to achieve necessary budgetary savings by service area, and may also be applied to all inpatient services for traditional fee-for-service clients. Subsection (d) exempts in-state children's hospitals from the rate reductions in subsections (b) and (c).

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first 5-year period the proposed rule is in effect there will be a fiscal impact to state government. Savings in General Revenue to the State as a result of this proposed rule is estimated to be $73,000,000 in State Fiscal Year 2007; $54,750,000 in State Fiscal Year 2008; $54,750,000 in State Fiscal Year 2009; $54,750,000 in State Fiscal Year 2010; and $54,750,000 in State Fiscal Year 2011. The fiscal implications to state health and human services agencies will be negligible as a result of enforcing or administering this amendment. Reduction in revenue to hospitals serving Medicaid patients as a result of this proposed rule is estimated to be $186,082,078 in State Fiscal Year 2007; $139,597,143 in State Fiscal Year 2008; $139,597,143 in State Fiscal Year 2009; $139,597,143 in State Fiscal Year 2010; and $139,597,143 in State Fiscal Year 2011. The proposed rule will result in reductions in Medicaid revenue to local governments.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the enforcement of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local economies.

Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the section is in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be the savings of state general revenue and cost-effective managed medical care of the aged, blind, and disabled Medicaid population utilizing a health maintenance organization (HMO) carve-out model or Integrated Care Management (ICM) model.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Scott Reasonover, Director of Rate Analysis for Hospital Services, via facsimile (512) 491-1998, e-mail to Scott.Reasonover@hhsc.state.tx.us, or mail to HHSC Rate Analysis for Hospital Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8064. Reimbursement Adjustment for Hospitals Providing Inpatient Services to SSI and SSI-related Clients.

(a) Effective September 1, 2006, reimbursement to hospitals in Bexar, Dallas, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis service areas for inpatient services will be determined according to the methodology described in §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services.) and shall be reduced by the percent discounts in subsections (b) and (c) of this section. The percent discounts are necessary to achieve budgetary savings as permitted under §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(b) An eight percent discount may be applied to the reimbursement rates of all hospitals for inpatient services provided to Supplemental Security Income (SSI) and SSI-related clients in service areas as determined by the Health and Human Services Commission (HHSC).

(c) In addition to the discount in subsection (b) of this section a percent discount as determined by HHSC may be applied to inpatient reimbursement rates in order to achieve necessary budgetary savings. This additional discount may be targeted to specific hospitals and vary by service area, depending on the amount necessary to achieve the targeted savings for each service area. This additional discount may also be applied to all inpatient services for traditional fee-for-service clients in service areas determined by HHSC.

(d) In-state children's hospitals that are cost reimbursed in accordance with §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services.) are exempt from the percent discounts in subsections (b) and (c) of this section.

(e) Definitions.

(1) Bexar Service Area means Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson counties.

(2) Dallas Service Area means Collin, Dallas, Ellis, Hunt, Kaufman, Navarro and Rockwall counties.

(3) El Paso Service Area means El Paso County.

(4) Harris Service Area means Brazoria, Fort Bend, Galveston, Harris, Montgomery and Waller counties.

(5) Lubbock Service Area means Crosby, Floyd, Garza, Hale, Hockley, Lamb, Lubbock, Lynn and Terry counties.

(6) Nueces Service Area means Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio and Victoria counties.

(7) Tarrant Service Area means Denton, Hood, Johnson, Parker, Tarrant and Wise counties.

(8) Travis Service Area means Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603152

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 424-6576

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1 TAC §355.8071

The Texas Health and Human Services Commission (HHSC) proposes to add new §355.8071 to Chapter 355 of Title 1 of the Texas Administrative Code. Section 355.8071 establishes the methodology HHSC will use to distribute supplemental (Upper Payment Limit) payments to children's hospitals.

Background and Purpose

The 2006-07 General Appropriations Act (Article II, Health and Human Services Commission, Rider 73, S.B. 1, 79th Legislature, Regular Session, 2005) appropriates $12.5 million in General Revenue for each year of the biennium to provide Medicaid upper payment limit (UPL) reimbursement to in-state children's hospitals. The rider directs HHSC to implement Medicaid UPL reimbursement to cover the cost incurred by Medicare-designated children's hospitals in providing Medicaid inpatient and outpatient services and Graduate Medical Education. The proposed new rule implements Rider 73. Another appropriation would be required by the 80th Legislature to extend this program beyond the current biennium.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that the proposed rule is expected to increase state expenditures and the amount of federal matching funds to the State. During state fiscal years 2006 and 2007, the amendment is estimated to result in state expenditures of $25,000,000, which will be used to draw federal matching funds of $39,284,029. HHSC does not have estimates beyond state fiscal year 2007 because this program is contingent on state appropriations, which haven't been determined yet for state fiscal years 2008 through 2010.

Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the proposed new rule.

Cost to Persons and Effect on Local Economies

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this proposed rule. The proposed rule will not affect a local economy.

Public Benefit

Scott Reasonover, Director of Rate Analysis for Hospital Services, has determined that for the 2006 - 2007 biennium, the public benefit expected as a result of enforcing the proposed new rule is that children's hospitals in the State of Texas will recover more of their cost of treating Medicaid patients.

Regulatory Analysis HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way,

the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

Public Comment

Questions about the content of this proposal may be directed to Kevin Niemeyer (512) 491-1366 in HHSC Rate Analysis for Hospital Services. Written comments on the proposal may be submitted to Mr. Niemeyer via facsimile (512) 491-1998, e-mail to Kevin.niemeyer@hhsc.state.tx.us, or mail to HHSC Rate Analysis for Hospital Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The new section is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32; and Rider 73, S.B. 1, 79th Legislature, Regular Session, 2005.. This amendment implements the Government Code, §§531.033 and 531.021(b) and Rider 73.

The proposed new rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8071. Supplemental Payments to Children's Hospitals.

Notwithstanding other provisions of this subchapter and subject to the availability of appropriated funds, supplemental payments are available under this section for hospital services provided by certain children's hospitals.

(1) For purposes of this section, "Children's Hospital" means a freestanding children's hospital within Texas that is certified by Medicare as a children's hospital and is exempted from the Medicare prospective payment system.

(2) State funding for supplemental payments authorized under this section is limited to funds appropriated for this purpose. Supplemental payments described in this section are made in accordance with the applicable regulations regarding the Medicaid upper payment limit provisions codified at 42 C.F.R. §447.272.

(3) Pending federal approval, supplemental payments are made on a periodic basis to eligible Children's Hospitals.

(4) The total amount of the supplemental payments for a state fiscal year is the amount determined by dividing (100% minus the current state fiscal year Federal Medical Assistance Percentage (FMAP)) into the state funds appropriated for this program for a state fiscal year.

(5) The amount of the supplemental payment to a children's hospital is determined by the following process:

(A) HHSC shall determine the hospital-specific Disproportionate Share Hospital (DSH) limit for each children's hospital, according to §355.8065 of this title (relating to Additional Reimbursement to Disproportionate Share Hospitals), using a 12 consecutive month period of the most recent data from the DSH program.

(B) The hospital-specific DSH limit shall be multiplied by a weighting factor to yield the weighted hospital-specific limit for each hospital. The weighting factor for each hospital equals 40% divided by (100% - Medicaid %). The Medicaid % is the percent of a hospital's inpatient days of care provided to Medicaid-eligible patients and shall be determined by HHSC using the most recent data from the Disproportionate Share Hospital program. The maximum weight shall be 3.000.

(C) Each hospital's pro rata share of the sum of the weighted hospital-specific limits for all children's hospitals shall be multiplied by the total amount of supplemental payments for a fiscal year to yield an initial computation of a hospital's annual supplemental payment.

(D) Using the most recent data from the Disproportionate Share Hospital program, HHSC shall determine a supplemental payment limit for each hospital, which equals the difference between the hospital-specific DSH limit and the total DSH payment to the hospital for the fiscal year. A supplemental payment to a hospital cannot exceed the hospital's supplemental payment limit.

(E) The supplemental payment excess is the sum of the initial computation of a hospital's annual supplemental payment minus the hospital's supplemental payment limit.

(F) The supplemental excess shall be distributed to hospitals that have not reached their supplemental payment limits. The supplemental payment excess, as computed above, shall be distributed to the remaining hospitals according to their proportionate share of total maximum UPL room. The total supplemental payments to the remaining hospitals shall be the sum of their initial computations of supplemental payments and their proportionate share of the supplemental payment excess.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603153
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 424-6576

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER S. MOTOR VEHICLE SALES FINANCE LICENSES

7 TAC §1.1402

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC §1.1402, concerning the filing of new applications for motor vehicle sales finance licenses. Elsewhere in this issue of the *Texas Register,* the commission simultaneously withdraws the proposed amendment to §1.1402 published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3341).

The commission proposed amendments to §1.1402 to clarify the requirements for disclosure of owners and principal parties under §1.1402(1)(B) for general partnerships and limited partnerships. The proposed amendments also intended to clarify the fingerprinting requirements under §1.1402(1)(F).

Upon additional review the commission has determined that the substance of this rule more effectively belongs in Part 5, in new Chapter 84, concerning Motor Vehicle Installment Sales. Therefore, the proposed amendments are being proposed for withdrawal and the rule proposed for repeal. A new rule containing these amendments is included in the proposal of the new Chapter 84 rules which was published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3776).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§1.1402. Filing of New Application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603133

Leslie Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 936-7622

CHAPTER 3. STATE BANK REGULATION
SUBCHAPTER F. ACCESS TO INFORMATION

7 TAC §3.111

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes to amend §3.111, concerning the disclosure of confidential information in the possession of the department. Subchapter F addresses access to information held by the department. Section 3.111 explains the confidentiality provisions of the Finance Code, and establishes specific exceptions to the general rule of non-disclosure of confidential information mandated by the Finance Code.

The department has determined that these exceptions to non-disclosure should be expanded and clarified to specifically permit the department to honor a request by a financial institution to obtain certified copies of confidential information it previously submitted to the department. In addition, the department has determined it should relax the existing restrictions concerning corporate filings by regulated financial institutions to accommodate public information requests for required corporate filings made by regulated financial institutions with the department.

In addition, the department has determined it should permit the release of information contained in the public portion of an application filed with the department, and to release information previously disclosed to the public by the financial institution. Finally, the proposed amendments would authorize the department to make a charge of $20.00 for each request for a formal certificate to be issued by the department plus a charge of $1.00 per page for certified copies in order to recover the costs of providing certified copies and official certificates to financial institutions regulated by the department.

Gayle Griffin, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years that the amendments as proposed are in effect, the anticipated public benefit will be to clarify the authority of the department to release confidential information to specific regulated financial institutions that had been previously submitted by the financial institution to the department, will create a nominal cost to persons seeking certified documents from the department, will not create adverse economic effects on small businesses or micro-businesses, and will have no fiscal implications for state or local government.

To be considered, comments concerning the proposed amendments must be submitted within 30 days of publication to Robert Giddings, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by email to robert.giddings@banking.state.tx.us.

The amendments are proposed under the authority of Finance Code, §31.301(a), which authorizes the commission to adopt rules regarding the disclosure of confidential information by the department.

The Finance Code, Chapter 31, Subchapter D, Chapter 181, and §§201.007, 204.102(c), 204.117(d), and 204.205(d) are affected

by the proposed amendments. The increases in the rate of the fees charged for certified copies and for official certificates issued by the Texas Department of Banking are initiated by the Texas Department of Banking and approved by the Texas Finance Commission pursuant to the authority granted by Finance Code, §31.003, and the proposed fees are not mandated by the legislature.

§3.111. Confidential Information.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Confidential information--Written and oral information obtained directly or indirectly by the department relative to the financial condition or business affairs of a financial institution, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, whether obtained through application, examination, or otherwise, and all related files and records of the department, regardless of the form of the information when obtained or as held by the department or when the department first obtained it, and whether or not the information is part of the department's official files or records. The term does not include:

(A) the public portions of call reports of state banks and public trust companies; [~~and profit and loss statements~~.]

(B) the names of proposed directors of a de novo financial institution or an entity converting to a state financial institution;

(C) information contained in an official document required to be filed with the department in order to have legal effect (Examples of such documents include, without limitation, Articles of Amendment, Articles of Merger, or Articles of Conversion);

(D) information contained in the portion of an application submitted to the department that has been designated as public by the applicant, department or a federal agency; or

(E) information previously disclosed to the public by the person or entity to which the information relates.

(3) - (5) (No change.)

(c) - (d) (No change.)

(e) Exceptions to non-disclosure.

(1) Disclosures by the department. Confidential information disclosed by the department pursuant to an exception to disclosure remains the confidential property of the department. The department may:

(A) - (D) (No change.)

(E) provide a copy of the regular report of examination of a service provider and an order, opinion, or other confidential information relating to the service provider to the financial institution or institutions it services; [~~and~~]

(F) forward to a court of proper jurisdiction, subject to any existing administrative protective order, the record of an administrative hearing under appeal that contains confidential information. In the event an administrative protective order does not exist, the department or another party shall file a motion with the court for a protective order consistent with the terms of subsection (f)(4) of this section prior to filing the administrative record. Discretion of the banking commissioner or finance commission to vacate an administrative protective order entered under §9.22 of this title (relating to Protective Orders and Motions to Compel) ceases at the time the appeal is filed; [~~.~~]

(G) provide complete copies of documents previously submitted to the department by a financial institution to the same financial institution or the successor financial institution upon request; and

(H) provide certificates and certified copies upon request. The cost for a formal certificate issued by the department shall be $20.00 plus $1.00 per page for certified copies of pages attached to the certificate.

(2) - (3) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603130
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Proposed date of adoption: August 11, 2006
For further information, please call: (512) 475-1300

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CHAPTER 4. CURRENCY EXCHANGE

7 TAC §4.6, §4.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes the repeal of §4.6, concerning exemptions, and §4.11, concerning fees.

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Transmission Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange businesses in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 4 consists of the administrative rules the commission previously adopted to implement the repealed Currency Exchange Act. The commission is adopting new regulations under the MSA, which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Chapter 4. Ultimately, all Chapter 4 sections will be repealed.

The commission proposes to repeal §4.6 and §4.11 because the substance of these sections is incorporated into or rendered unnecessary by the MSA, or is included in new sections of Chapter

33 that the commission is simultaneously proposing in this issue of the *Texas Register*. Section 4.6 concerns exemptions from licensing under the repealed Currency Exchange Act. The exclusions and exemptions from the licensing requirements of the MSA are set out in the Finance Code, §§151.003, 151.302(c), and 151.501(d), and proposed new 7 TAC §33.7. Section 4.11 establishes the fees a person must pay to obtain and maintain a license under the repealed Currency Exchange Act. Fees, assessments and reimbursements under the MSA are set out in proposed new 7 TAC §33.27. The sections proposed for repeal are therefore unnecessary or obsolete.

Ms. Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal of these sections.

Ms. Newberg has also determined that, for each of the first five years the repeal as proposed will be in effect, the anticipated benefit will be the deletion of regulations that are unnecessary or obsolete. The repealed sections will be replaced with new, updated regulations that are clearer and reflect the provisions of the MSA, and, further, that establish fair and equitable fees, assessments and reimbursements in an amount that allows the department to recover its costs in administering and enforcing the MSA.

To be considered, comments on the proposed repeal must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to: sarah.shirley@banking.state.tx.us.

The repeal is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

Finance Code, Chapter 151, is affected by the proposed repeal.

§4.6. Exemptions.

§4.11. What fees must I pay to get and maintain a currency exchange, transportation or transmission license?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603131
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Proposed date of adoption: August 11, 2006
For further information, please call: (512) 475-1300

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 29. SALE OF CHECKS ACT

7 TAC §29.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Banking or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes the repeal of §29.2, concerning fees, assessments and reimbursements.

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Transmission Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange businesses in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 29 consists of the administrative rules the commission previously adopted to implement the repealed Sale of Checks Act. The commission is adopting new regulations under the MSA which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Chapter 29. Ultimately, all Chapter 29 sections will be repealed.

Section 29.2 establishes the fees, assessments and reimbursements a person must pay to obtain and maintain a license under the repealed Sale of Checks Act. The commission proposes to repeal this section because fees, assessments and reimbursements under the MSA are set out in proposed new 7 TAC §33.27 that the commission is simultaneously proposing in this issue of the *Texas Register*. Section 29.2 is therefore obsolete and unnecessary.

Ms. Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal of this section.

Ms. Newberg has also determine that, for each of the first five years the repeal as proposed will be in effect, the anticipated benefit will be the deletion of regulations that are unnecessary or obsolete. The repealed section will be replaced with new, updated regulations that are clearer and reflect the provisions of the MSA, and, further, that establish fair and equitable fees, assessments and reimbursements in an amount that allows the department to recover its costs in administering and enforcing the MSA.

To be considered, comments on the proposed repeal must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to: sarah.shirley@banking.state.tx.us.

The repeal is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

Finance Code, Chapter 151, is affected by the proposed repeal.

§29.2. Fees, Assessments and Reimbursements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603128
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 11, 2006
For further information, please call: (512) 475-1300

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CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.7, §33.27

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes to adopt new §33.7, concerning a currency exchange license exemption for persons that exchange currency in connection with retail, wholesale or service transactions, and §33.27, concerning fees, assessments and reimbursements. The new sections are proposed under the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), which took effect September 1, 2005.

The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, regulates persons that engage in the money transmission and currency exchange businesses in Texas. Prior to the enactment of the MSA, Texas law regulated these businesses under two separate chapters of the Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Exchange Act). The MSA consolidates regulation into one statute and repeals the Sale of Checks and Currency Exchange Acts.

The commission is in the process of adopting new regulations to implement the MSA. The proposed new sections will replace existing 7 TAC §4.6, concerning exemptions, §4.11, concerning currency exchange, transportation, or transmission license fees, and §29.2, concerning sale of checks license fees, which sections were adopted under the repealed Sale of Checks and Currency Exchange Acts. The commission is simultaneously proposing to repeal these existing sections in this issue of the *Texas Register*.

Proposed new §33.7 relates to the exemption from currency exchange licensing provided for in §151.502(d) of the MSA. Section 151.502(d) authorizes the Banking Commissioner (commissioner) to exempt a person that exchanges currency in connection with a retail, wholesale or service provider transaction if the person satisfies certain eligibility requirements. The proposed new section, which incorporates the provisions of existing 7 TAC §4.6 that have not been rendered unnecessary or obsolete by the MSA, clarifies the scope and requirements of the statutory exemption. The exemption applies to a person that accepts foreign currency as payment for goods or services and, in connection with the transaction, makes or gives change in a different currency. The proposed new section clarifies that a person does not exchange currency within the meaning of the MSA, and therefore does not need a currency exchange license or an exemption, if the person accepts payment for goods or services in a foreign currency or a check denominated in a foreign currency and gives or makes change only in the same currency as the payment.

Proposed new §33.7 also clarifies §151.502(d)(4) of the MSA, which provides that a person engaged in the business of cashing checks (and not otherwise exempt from licensing) is not eligible for the exemption. The proposed new section explains what constitutes the "business of cashing checks" for purposes of the disqualification. Finally, proposed new §33.7 sets out procedures related to requesting and granting the exemption.

Proposed new §33.27 establishes fees, assessments and reimbursements (fees) under the MSA. As previously explained in this preamble, the MSA consolidates the regulation of money services businesses in Texas into one statute. As a result of the enactment of the MSA, the fee rules the commission previously adopted under the repealed Currency Exchange and Sale of Checks Acts are obsolete and a new fee section is necessary.

The commission proposes new §33.27 under the general authority of §151.102(a)(5) of the MSA, which authorizes the commission to adopt rules necessary or appropriate to recover the cost of maintaining and operating the department and the cost of administering and enforcing the MSA and other applicable law. Subsection (a)(5) authorizes the imposition and collection of proportionate and equitable fees and costs for notices, applications, examinations, investigations and other actions required to achieve the Act's purposes. Certain of the fees established under proposed new §33.27 are also authorized by specific sections of the MSA, to wit, Finance Code, §§151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), and 151.605(i).

The department has determined that the fees established under existing 7 TAC §4.11 and §29.2 are insufficient to pay for the department's MSA regulatory costs and that the fees must be increased. As a general matter, license holders and applicants will pay the department more in fees under proposed new §33.27 than under the existing fee sections. The increase is necessitated by several factors. The primary factor is the loss of federal grant money the department has received for the past ten years and has used to offset the department's costs related to the regulation of money services businesses. The grant funding terminated effective September 1, 2005, and the department must now make up for the lost funding. Additionally, the department has been required to expand its examination staff because examinations are more complex and require additional time to complete. Department examiners must verify compliance with a number of state and federal laws and regulations applicable to money services businesses, including the Bank Secrecy Act. As a result, more examiners are needed to complete examinations within the time parameters established by the department's statutorily mandated performance measures. The commission notes that despite inflation and rising program costs, the amount of annual assessments charged license holders under the repealed Sale of Checks Act has not increased since 1996, and the amount charged license holders under the repealed Currency Exchange Act since 2002.

Based upon the department's experience in processing and acting upon applications, renewals and other approvals required in connection with the regulation of money services businesses, and the number of license holders and the department's experience in regulating them, the department believes that the fees proposed under new §33.27 provide the funding required to administer and enforce the MSA and do so in a manner that is fair and equitable to all license holders. Because the MSA does not

allow the department to retain fee revenue in excess of that required for regulatory purposes, the proposed new section authorizes the commissioner to reduce a fee if the commissioner determines that a lesser amount is sufficient.

Consistent with established practice, the department provided each of its MSA license holders with a draft of the fee rule, along with a letter detailing the license holder's anticipated fees under the proposal, and invited informal comments. Four of the department's 134 license holders responded. Several commented that the proposal provides for too great a fee increase and others suggested alternatives, including establishing different fees for different types of money transmission and basing fees in part on a license holder's examination rating. The department respects and has carefully considered the suggestions, but believes that the rule, as initially drafted and as now proposed, best satisfies the mandate of §151.102(a)(5) of the MSA that the fees be proportionate and equitable and provide for recovery of the department's costs related to administering and enforcing the Act.

Proposed new §33.27(a) - (c) identifies to whom the new section applies, defines terms, and references the MSA provisions that authorize the proposed fees.

Proposed new §33.27(d) establishes the fee an applicant for a new money transmission or currency exchange license must pay and provides that the applicant may also be required to pay certain additional fees and costs related to the commissioner's investigation of the applicant and the application to determine whether the license should be granted. Proposed new subsection (d) also sets the fee an applicant for a temporary money transmission license must pay in addition to the new license application fees.

Proposed new §33.27(e) establishes the fees a license holder must pay to renew its money transmission or currency exchange license.

Proposed new §33.27(f) establishes the fees a license holder must pay in connection with a proposed change of control of the license holder's money transmission or currency exchange business, or to obtain the department's prior determination regarding a possible "person in control" or whether a change of control application is required.

Proposed new §33.27(g) establishes the fees a person must pay related to an investigation of the person the commissioner considers necessary or appropriate to administer and enforce the MSA.

Proposed new §33.27(h) establishes the annually assessed examination fee (annual assessment) a license holder must pay. The amount of the annual assessment is based on the total annual dollar amount of the license holder's money transmission or currency exchange transactions in Texas, the basis used for calculating assessments under existing 7 TAC §4.11 and §29.2. The proposed new section also retains the existing assessment structure by establishing "ranges" of dollar amounts and a corresponding assessment for each. For example, if the total annual amount of a license holder's Texas transactions is between $250,000 and $499,999.99, the annual assessment is $1,950 plus the amount of transactions over $250,000 multiplied by a specified factor. However, the proposed new section provides for more "ranges" to better and more closely tie the assessment to the license holder's dollar volume of business. The proposed new section also caps the annual assessment a license holder may be required to pay at $15,000.

The annual assessment provided for in proposed new §33.27(h) includes the cost of one examination and the associated travel expenses for an on-site examination conducted in Texas. The proposed new section establishes the per day fee a license holder must pay if an additional examination is required during a one year period because of the license holder's failure to comply with the Money Services Act, commission rules, or a department directive and requires payment of associated travel costs. Under the proposed new section, the per day fee and travel expense payment also applies to new license holders that have not yet filed an annual report and for whom the information necessary to calculate the first annual assessment is unavailable, as well as to the on-site examination of a license holder's authorized delegate. Finally, the proposed new section requires a license holder to pay the department's travel expenses related to out-of-state examinations.

Proposed new §33.27(i) establishes the time and method of payment for the fees required under the proposed new section. The proposed new section requires license holders to pay annual assessments and renewal fees by ACH debit.

Proposed new §33.27(j) authorizes the commissioner to temporarily reduce a currency exchange license holder's annual assessment if the license holder is experiencing financial difficulties and certain requirements are met. The proposed new section establishes the procedures the license holder must follow to request the temporary reduction.

The fees provided for in proposed new §33.27 are established by the commission and not mandated by the Legislature.

Russell Reese, Director of Special Audits, Texas Department of Banking, has determined that for the first five-year period that the proposed new sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections. The total amount of the department's appropriations for all regulatory programs the department administers will remain approximately the same. Only the sources of revenue to administer and enforce the MSA will change.

Mr. Reese has also determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of their adoption will be clear and updated regulations that conform to the MSA. Further, under the proposed new §33.27 fee structure, the money services businesses industry will wholly fund its regulation and, as a result, such regulation will not require the expenditure of public monies from other sources.

Mr. Reese has further determined that, for each year of the first five years the proposed new sections are in effect, there will be no economic costs to persons related to proposed new 33.7. The economic costs to persons required to comply with proposed new §33.27 will be: (1) the average yearly fee increase to a currency exchange license holder will be approximately $728; and (2) the average yearly fee increase to a money transmission license holder will be approximately $2,559.

Of the 45 currency exchange license holders, 42 are micro-businesses and 3 are small businesses under the definitions of those terms in Government Code, §2006.001. The average fee increase for the micro-businesses under proposed new §33.27 will be approximately $779, or $.008092 per $100 in currency exchange transactions in Texas. The average fee increase for the small businesses will be approximately $22, or $.000009 per $100 in currency transactions in Texas. Since all currency ex-

change license holders are small or micro-businesses, proposed new §33.27 will not result in a disproportionate effect on small and micro-businesses as compared to larger businesses.

Of the 67 money transmission license holders, 14 are micro-businesses, 28 are small businesses, and 25 are large businesses. The average fee increase for the micro-businesses under proposed new §33.27 will be approximately $1,569, or $.021603 per $100 in money transmission transactions in Texas. The average fee increase for the small businesses will be approximately $2,014, or $.001725 per $100 in money transmission transactions in Texas. The average fee increase for the large businesses will be approximately $3,725, or $.000111 per $100 in money transmission transactions in Texas.

The department has issued 2 new currency exchange licenses and 20 new money transmission licenses. Under MSA reporting provisions, the new license holders are not yet required to file with the department the report that reflects the dollar volume of Texas currency exchange or money transmission transactions. The department is thus unable to calculate the increased fee the new license holders will be required to pay under proposed new §33.27.

To be considered, comments on the proposed new section must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to sarah.shirley@banking.state.tx.us.

The new sections are proposed under the authority of §151.102(a) of the MSA, which authorizes the commission to adopt rules to administer and enforce the Act, including clarifying and cost recovery rules. New §33.27 is also proposed under the following sections of the MSA that specifically reference fees: Finance Code, §§151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), and 151.605(i).

Finance Code, Chapter 151, is affected by the proposed new sections.

§33.7. How Do I Obtain an Exemption from Licensing Because I Exchange Currency in Connection with Retail, Wholesale or Service Transactions?

(a) Does this section apply to me?

(1) This section applies if you are a retailer, wholesaler or service provider and in the ordinary course of business:

(A) accept the currency of a foreign country or government as payment for your goods or services;

(B) in connection with the transaction, make or give change in the currency of a different foreign country or government; and

(C) qualify for an exemption under Finance Code, §151.502(d).

(2) This section does not apply, and you do not conduct currency exchange within the meaning of Finance Code, Chapter 151, or need a currency exchange license under the Act, if you accept payment for your goods or services in a foreign currency or a check denominated in a foreign currency and any change you make or give in connection with the transaction is in the same foreign currency as the payment you receive.

(b) To request an exemption, you must submit a letter to the commissioner that fully explains your business and is accompanied by a statement, signed and sworn to before a notary, affirming that none of the disqualifying conditions set out in Finance Code, §151.502(d)(1) - (5), apply to you. For purposes of the subsection (d)(4) disqualification, you are considered to be engaged in the "business of cashing checks, drafts or other monetary instruments" if, in the 12 month period immediately preceding the filing of the application for exemption, you derived more than 1.00% of your gross receipts, directly or indirectly, from fees or other consideration you charged, earned, or imputed from cashing checks, drafts or other monetary instruments.

(c) The commissioner may require you to provide additional information or otherwise investigate or examine you to verify your eligibility for the exemption.

(d) The commissioner may grant the exemption if the commissioner determines that you are eligible and the exemption is in the public interest.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) Does this section apply to me? This section applies if you hold a money transmission or currency exchange license issued under Finance Code, Chapter 151, or are an applicant for a new money transmission or currency exchange license, as applicable. This section also applies if you are a person other than a license holder or applicant and are investigated under the authority of Finance Code, §151.104.

(b) Definitions.

(1) "Annual Assessment"--the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 151.

(2) "Examination"--the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §151.601, relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §§151.104, 151.305, or 151.505.

(c) What provisions of Finance Code, Chapter 151, authorize the fees, assessments, and reimbursements required under this section? The fees, assessments, and reimbursements established by or required under this section are authorized by one or more of the following provisions of Finance Code, Chapter 151: §§151.102(a)(5), 151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3), and 151.605(i).

(d) What fees must I pay to obtain a new license?

(1) You must pay a non-refundable $2,500 application fee to obtain a new money transmission license or currency exchange license. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you must pay a non-refundable investigation fee at a rate of $600 per day for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner determines it is necessary to perform background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) To apply for a temporary money transmission license authorized under Finance Code, §151.306, you must pay a non-refundable $1,500 temporary license application fee in addition to the fees required under paragraph (1).

(3) The commissioner may reduce the fees required under paragraphs (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(e) What fees must I pay to renew my license?

(1) If you hold a currency exchange license, you must pay an annual license renewal fee of $500.

(2) If you hold a money transmission license, you must pay an annual license renewal fee of $1,500.

(f) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable $600 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable $300 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of $75.00 per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 151, and this chapter.

(g) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 151, as authorized under §151.104, you or the investigated person must pay the department an investigation fee calculated at a rate of $75.00 per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(h) What fees must I pay for an examination?

(1) You must pay an annually assessed examination fee (annual assessment). The amount of the fee is based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on the most recent renewal report you have filed with the department. You must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(h)(1)

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 151, this chapter, or a department directive, you must pay for the additional examination at a rate of $600 per day for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) If you are a new license holder and have not yet filed your first annual renewal report required under Finance Code, §151.207(b)(2), you must pay an examination fee of $600 per day for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (1) of this subsection.

(4) If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(5) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 151, you must pay an examination fee of $600 per day for each examiner and any associated travel expenses.

(i) How and when do I need to pay for the fees required by this section?

(1) You must pay the license application fees required under subsections (d)(1) and (d)(2) of this section at the time you file your application for a license.

(2) The department will bill you by written invoice for any investigation and third-party screening service fees under subsections (d)(1)(A),(B), or (C) of this section. You must pay the fees within 10 days of receipt of the department's written invoice.

(3) You must pay the annual renewal license fee required under subsection (e) of this section at the time you file your completed renewal report. Additionally:

(A) You must pay the fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the fee and the date the department will initiate payment of the fee by ACH debit, which will be July 1 of each year or, if July 1 is a holiday, the last business day immediately preceding July 1; and

(B) if the department does not receive both your completed renewal report and renewal fee by July 1, you must pay a late fee of $100 per day for each business day after July 1 that the department does not receive your completed renewal report and renewal fee. You must pay this fee immediately upon receipt of the department's written invoice.

(4) You must pay the filing fees required by subsection (f) of this section at the time you file your proposed change of control or prior determination request. You must pay any required additional fees within 10 days of receipt of the department's written invoice.

(5) You or another person must pay the investigation fee required under subsection (g) of this section within 10 days of receipt of the department's written invoice.

(6) Your annual assessment required under subsection (h)(1) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 151. You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior

to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would otherwise be collected is necessary to administer the Act.

(7) The department will bill you for any additional examination fees required under subsections (h)(2), (3), (4), or (5) of this section by written invoice. You must pay this additional examination fee within 10 days of receipt of the department's written invoice.

(8) A fee is considered paid as of the date the department receives payment.

(j) What if I cannot afford the annual assessment?

(1) This subsection applies only if you hold a currency exchange license. If you are experiencing financial difficulties, you may be able to obtain a temporary reduction in the amount of your annual assessment for one year by meeting the requirements of this subsection.

(2) To request a reduction in your annual assessment, you must file a written application as described in paragraph (2)(A) of this subsection and the commissioner must find that your application satisfies the requirements described in paragraph (2)(B) of this subsection. If the commissioner decides to reduce your annual assessment, the commissioner has discretion to determine the amount of the reduction.

(A) To request a reduction in your annual assessment, you must:

(i) file a written application with the department not later than 10 days before the date the current annual assessment is due, accompanied by a written business recovery plan and other supporting documentation sufficient to demonstrate that you satisfy each factor described in paragraph (2)(B) of this subsection; and

(ii) file any additional documentation the department requests not later than the seventh day after the date you receive the written request.

(B) The commissioner will not reduce your annual assessment unless the commissioner finds, based on your application and supporting documentation, that:

(i) Your payment of the full assessment will cause you to become financially insolvent, and your current or impending financial condition is temporary and you reasonably expect to have the ability to pay your annual assessment in full by at least the third year after the year in which your request is made, based on a written business recovery plan that is reasonable and attainable; or

(ii) your business is temporarily closed during the annual assessment period and you have conducted no currency exchange activities during that period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603129
Everette D. Jobe
Certifying Official
Texas Department of Banking
Proposed date of adoption: August 11, 2006
For further information, please call: (512) 475-1300

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209

The Finance Commission of Texas reproposes new 7 TAC §84.209, concerning Motor Vehicle Installment Sales Model Clauses. The new rule provides model clauses for Chapter 348 motor vehicle retail installment sales transactions.

This rule is part of a relocation and reorganization of the agency's rules. The agency believes that the reorganization will benefit licensees in that the rule will be in a more logical location and order and will be easier to find. The new rule is substantially similar to the rule pending repeal, as found in 7 TAC §1.1308. The commission's proposed repeal of §1.1308 along with the rest of Subchapter R was published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3783). Section 84.209 is being reproposed for comment due to some language concerning balloon payments in §84.209(24)(B) that had been inadvertently omitted.

The new rule implements the provisions of Texas Finance Code §341.502, which require contracts under Chapter 342 or 348, whether in English or in Spanish, to be written in plain language. The proposed rule provides model contract provisions for use by creditors who are licensed by the Office of Consumer Credit Commissioner. Use of the model contact is optional; however, should a licensee choose not to use the model contract, or a contract comprised of model clauses, then the licensee's non-standard contract must be submitted to the agency in accordance with the provisions of new 7 TAC §84.202.

The following paragraph regarding the purposes of the rule tracks the original purpose language used when this rule was originally adopted. These purposes still exist. The only changes made from the prior version of the rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. This rule was reviewed during 2005 and is merely being relocated (with technical corrections).

Section 84.209 (current §1.1308) contains the model clauses. These clauses are the administrative interpretation of a plain language version of typical contract provisions. Some model clauses are required by state and federal statute and regulations depending on the circumstances of a particular transaction.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of the new rule will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of this rule has already been in effect; thus, there is no anticipated cost to persons who are required to comply with the new rule as proposed. There is no anticipated adverse economic effect on

small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

This new rule is proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by this rule are contained in Texas Finance Code, Chapter 348.

§84.209. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Chapter 348.

(1) Identification of parties. This information identifies the parties to the contract.

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:
Figure: 7 TAC §84.209(1)(A)

(B) The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your."

(2) Assignment of contract. The model clause regarding assignment of contract reads: "This contract may be transferred by the Seller."

(3) Buyer's affirmation and promise to pay. The model clause regarding buyer's affirmation and promise to pay reads: "The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not."

(4) Inspection acknowledgement. The model clause regarding inspection acknowledgement reads: "I have thoroughly inspected, accepted, and approved the motor vehicle in all respects."

(5) Identification of the motor vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification of the motor vehicle reads:
Figure: 7 TAC §84.209(5)

(6) Trade-in vehicle description. The model clause regarding trade-in vehicle description reads:
Figure: 7 TAC §84.209(6)

(7) Truth in Lending Act disclosure. The model clause regarding Truth-in-Lending Act disclosure reads:
Figure: 7 TAC §84.209(7)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §84.209(8)(A)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §84.209(8)(B)

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code §348.006 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(B) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comparador como gastos de manojo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es

requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."

(10) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. The model clause regarding deferred downpayments reads:
Figure: 7 TAC §84.209(10)

(11) Required physical damage insurance. The creditor may chose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:
Figure: 7 TAC §84.209(11)

(12) Optional insurance coverages. The model clause regarding optional insurance coverages reads:
Figure: 7 TAC §84.209(12)

(13) Optional credit life and accident and health insurance. The model clause regarding optional credit life and accident and health insurance reads:
Figure: 7 TAC §84.209(13)

(14) Liability insurance. If liability insurance coverage is not included in the contract, any of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(A) "THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(B) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT."

(C) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The model clause regarding prohibition against oral modifications reads:
Figure: 7 TAC §84.209(15)

(16) Finance charge earnings methods.

(A) Regular transaction using sum of the periodic balances method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract."

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(B) True daily earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method:

(i) Sales tax advance: At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(A) For Contracts Using the Sum of the Periodic Balances Method (Rule of 78s) or the Scheduled Installment Earnings Method. The notice may read:

(i) "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS." or

(ii) "NOTICE TO THE BUYER--THE BUYER SHOULD NOT SIGN THIS CONTRACT BEFORE READING IT OR IF IT CONTAINS ANY BLANK SPACES. THE BUYER IS ENTITLED TO A COPY OF THE SIGNED CONTRACT. UNDER THE LAW, THE BUYER HAS THE RIGHT TO PAY OFF IN ADVANCE ALL THAT THE BUYER OWES AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. THE BUYER SHOULD KEEP THIS CONTRACT TO PROTECT ITS LEGAL RIGHTS."

(B) For contracts using the true daily earnings method. The notice may read: "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY SAVE A PORTION OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS."

(18) Buyer's acknowledgment of contract receipt.

(A) The following acknowledgments conform to the requirements of Texas Finance Code §348.112 if they appear directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. A creditor may choose the most appropriate option:

(i) If the buyer's signature is dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(ii) If the buyer's signature is not dated. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)."

(iii) If the buyer's signature is not dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read: "I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(iv) If the buyer's signature is not dated but the contract contains the date of the transaction. The model acknowledgement may read: "I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT."

(B) Acceptance of contract receipt. The model clause regarding acceptance of contract receipt reads:
Figure: 7 TAC §84.209(18)(B)

(19) Consumer credit commissioner notice. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title relating to Consumer Notifications. The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints."

(20) Finance charge refund method. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the finance charge refund

provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this Finance Charge Refund provision should not be disclosed because it is not applicable.

(A) Contracts using the sum of the periodic balances method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00."

(iii) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00."

(B) Contracts using the scheduled installment earnings method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00."

(21) Application of payments. In this provision, the term "finance charge" should not be construed to have the same meaning as Finance Charge as defined by the Truth in Lending Act. A default or late charge is considered to be a finance charge under Texas law; therefore, a default or late charge can be charged and collected as part of the earned finance charge. At the creditor's option the creditor may modify the application of payments language by adding "and late charges" following the phrase "earned but unpaid finance charge." The model clause reads:
Figure: 7 TAC §84.209(21)

(22) Effect of early and late payments. True daily earnings method: The model clause reads: "You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase."

(23) Interest on matured amount. The model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Chapter 303 of the Texas Finance Code.

(24) Balloon payments. If the contract has a balloon payment, the creditor must include a provision in the contract that allows the buyer to refinance the balloon payment over time. The provision must comply with Texas Finance Code §348.123. The model provision for defining the balloon payment reads: "A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment."

(A) Paying the balloon payment. If a retail installment contract contains a balloon payment that is the final payment, the contract must also provide the right for the retail buyer to pay the balloon payment. The model provision for paying the amount of the final scheduled balloon payment reads: "I can pay all I owe when the balloon payment is due and keep my motor vehicle."

(B) Balloon payment alternatives. If the retail installment contract contains the right for a retail buyer to refinance a balloon installment, the contract provision to refinance the installment must comply with either clause (i) or (ii) of this subparagraph. A contract under clause (ii) of this subparagraph must also contain the right of the retail buyer to sell the motor vehicle back to holder or retail seller.

(i) The model clause to describe a buyer's right to refinance a balloon installment under Texas Finance Code §348.123(a), when applicable reads: "If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income."

(ii) If the contract contains a balloon payment and the seller intends Texas Finance Code §348.123(b)(5) to apply to the contract:

(I) Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(B)(iii). "I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule."

(II) If the contract includes a balloon payment, the creditor must draft a provision addressing the repurchase option.

(25) Agreement to keep the motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle." The creditor may include the following optional provision: "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(26) Your right to purchase required insurance if I fail to keep the motor vehicle insured. The model clause regarding agreement to allow creditor to purchase required insurance if buyer fails to keep the motor vehicle insured reads: "If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file."

(27) Physical damage insurance proceeds. The model clause regarding physical damage insurance proceeds reads: "I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me."

(28) Returned insurance premiums and service contract charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(A) The model clause for contracts using the true daily earnings method reads: "If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(B) For contracts using the scheduled installment earnings or sum of the periodic balances method, the creditor may substitute the following: "If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(29) Application of credits. The model clause regarding application of credits reads: "Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments."

(30) Transfer of rights. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code, §348.301. The model clause regarding transfer of rights reads: "You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies."

(31) Grant of a security interest in collateral. The model clause regarding a description of a security interest granted in a typical motor vehicle installment sale reads:
Figure: 7 TAC §84.209(31)

(32) Agreements regarding the use and transfer of the motor vehicle. The contract may contain a provision prohibiting a buyer from transferring any interest in the motor vehicle without the creditor's written permission, requiring the buyer to notify the seller of change of address, or prohibiting the removal of the motor vehicle from Texas. The transfer fee limitation establishes the maximum fee that a creditor could contract for, charge, or collect for transferring the buyer's equity in the motor vehicle to another party. If desired, a creditor could amend the model provision to reflect a lower transfer fee amount. The model clause regarding agreements regarding the use and transfer of the motor vehicle reads: "I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25.00 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission."

(33) Care of the motor vehicle. The contract may obligate the buyer to keep the motor vehicle free of liens and encumbrances, require the buyer to keep the motor vehicle in good working order and repair, or prohibit the buyer from allowing the motor vehicle to be exposed to seizure, confiscation, or other involuntary transfer. The model clause regarding care of the motor vehicle reads: "I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount."

(34) Default rights and repossession provisions. This subsection details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Business and Commerce Code, §1.309. The following provisions are samples of model clauses of some of the

default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) Acceleration and default. The model clause regarding acceleration and default reads:
Figure: 7 TAC §84.209(34)(A)

(B) Late charge. The model clause regarding late charge reads: "I will pay you a late charge as agreed to in this contract when it accrues."

(C) Repossession. At the creditor's option a creditor may choose one of the following model provisions pertaining to repossession. The model clauses regarding repossession read:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "without breaching the peace," as determined by the Texas courts, and as found under clause (ii) of this subparagraph.

(ii) "If I default, you may repossess the motor vehicle from me if you do so without breaching the peace. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle."

(D) Buyer's right to redeem. The model clause regarding buyer's right to redeem reads: "If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract."

(E) Disposition of motor vehicle. The model clause regarding disposition of motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title."

(F) Collection costs. The model clause regarding collection costs reads: "If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows."

(G) Cancellation of optional insurance or service contracts. The model clause regarding cancellation of optional insurance or service contracts reads: "This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) Acceleration, waiver of notice of intent to accelerate, and notice of acceleration. A model clause regarding the holder's right to accelerate maturity of the contract and to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both reads: "If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(36) Refund upon acceleration. Sum of the periodic balances method or scheduled installment earnings method: The model clause regarding the buyer's right to a finance charge refund upon acceleration of the contract reads: "If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full."

(37) Integration and severability. The contract may include an integration clause indicating that the parties to the contract intend it to be final written expression their agreement, such as: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The contract may also include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) No waiver and limitations on creditor's rights and usury savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts."

(39) Applicable law. A model clause to establish the law that will apply to the contract reads: "Federal and Texas law apply to this contract."

(40) Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Subchapter C of the Business and Commerce Code, and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by

the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §433.1 *et seq.*, reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.1 *et seq.*, reads:

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

(43) Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (e.g., price paid to retail seller to purchase retail installment contract)."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603135
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 936-7622

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 17. STATE ARCHITECTURAL PROGRAMS

The Texas Historical Commission proposes the repeal of §17.1 and §17.3, concerning the Preservation Trust Fund Grants and the Texas Preservation Trust Fund and proposes a new rule §17.1, concerning the Texas Preservation Trust Fund. The repeal and new rule eliminate the duplication that occurred in the previous rules and the Texas Government Code §442.015. The new rule continues to establish requirements and procedures of the Texas Preservation Trust Fund and further clarifies grant awards, types of preservation grants, eligible property or project types while providing general clarification of the duties of the Texas Historical Commission's Executive Committee and Executive Director.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Oaks has also determined that for each year of the first five year period the rules are in effect, the public benefit anticipated as a result of administering the rules will be the elimination of duplication and clarification of grant procedures and guidelines.

There will be no effect on small business. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Written comments on the proposed rules may be submitted to Kimberly Gamble, Texas Register Liaison, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. All comments will be accepted for 30 days after the date of publication in the *Texas Register*.

13 TAC §17.1, §17.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Historical Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.015 is affected by the proposed repeals.

§17.1. Preservation Trust Fund Grants.

§17.3. Texas Preservation Trust Fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603141
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 463-8817

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13 TAC §17.1

The new rule is proposed under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.015 is affected by the proposed new rule.

§17.1. Texas Preservation Trust Fund.

(a) Definition. The Texas preservation trust fund (hereinafter referred to as trust fund or fund) is a fund in the state treasury, created by enactment of Senate Bill 294 by the 71st Texas Legislature (1989), which amended the Texas Government Code, Chapter 442, by adding §442.015. The trust fund shall consist of transfers made to the fund, including state and federal legislative appropriations, grants, donations, proceeds of sales, loan repayments, interest income earned by the fund, and any other monies received. Funds may be received from federal, state, or local government sources, organizations, charitable trusts and foundations, private individuals, business or corporate entities, estates, or any other source.

(b) Purpose. The purpose of the Texas preservation trust fund is to serve as a source of funding for the Texas Historical Commission (Commission) to provide financial assistance to qualified applicants for the acquisition, survey, restoration, preservation, or for planning and educational activities leading to the preservation, of historic properties and associated collections in the State of Texas.

(c) Types of assistance. Commission shall provide financial assistance in the form of grants or loans. Grant recipients shall be required to follow the terms and conditions of the Preservation Trust Fund Grants and other terms and conditions imposed by Commission at the time of the grant award. Loans shall have a term not to exceed five years at an interest rate at the prime interest rate at the time the loan is made.

(d) Allowable use of trust fund monies. In all cases when no specification is made or the specified amount is less than $5,000 the proceeds and/or interest on such gifts or monies shall be unencumbered and shall accrue to the benefit of the entire fund. Money deposited to the fund for specific projects shall only be used for the projects specified provided that the specific project has received approval of the Commission, there is or will be a dedicated account within the Trust Fund for that project, and all other requirements herein are met. Money deposited to specified projects in amounts of $5,000 or greater shall retain all proceeds or interest earned for that specified project unless the donor stipulates that all proceeds or interest earned shall be unencumbered and accrue to the benefit of the entire fund.

(e) Organization. The Texas preservation trust fund shall be administered by the Commission through its Executive Committee. The trust fund advisory board, and commission staff shall provide support and input as needed.

(f) All actions of the Executive Committee are subject to ratification by the full Texas Historical Commission with the exception of emergency grants. Duties of the Executive Committee are:

(1) to approve all policies and guidelines for the administration of the fund or any of its associated boards and committees;

(2) to approve the acceptance of grants or other donations of money, property, and/or services from any source. Money received shall be deposited to the credit of the Texas preservation trust fund;

(3) to provide final approval of all trust fund allocations based on advisory board and commission staff recommendations.

(g) Texas Preservation Trust Fund Advisory Board (hereinafter referred to as advisory board) as established per Texas Government Code §442.015, which created the Texas preservation trust fund. Members of the advisory board shall serve a two-year term expiring on February 1 of each odd-numbered year. Advisory board members may be reappointed. Advisory board members will continue to serve until a new appointment is made or until reappointed. A member of the advisory board is not entitled to compensation for his service, but is entitled to reimbursement for reasonable expenses incurred while attending advisory board meetings subject to any limit provided by the General Appropriations Act. The advisory board shall meet annually in the fall of each year or at other times as determined by the commission or Executive Director. Duties of the advisory board are:

(1) to make recommendations to the Commission through the Executive Committee on all trust fund project allocations with the exception of emergency grants, as per the trust fund statute;

(2) to consult with and advise the Executive Committee and Commission staff on matters relating to more efficient utilization or enhancement of the trust fund in order to further the cause of historic preservation throughout Texas; and

(3) to provide advice and guidance in their respective area of expertise.

(h) Texas preservation trust fund staff. The executive director of the Texas Historical Commission shall organize and supervise the staff for the Texas preservation trust fund.

(i) General provisions.

(1) Code of conduct--The Commission Code of Conduct shall apply to members of the advisory board.

(2) Vacancies--Any vacancy on the advisory board may be filled at any time in the same manner as the incumbent member was appointed.

(j) Eligible property or projects. To be considered eligible for grant assistance, a property or project must:

(1) be included in the National Register of Historic Places; or

(2) be designated as a Recorded Texas Historic Landmark; or

(3) be designated as a State Archeological Landmark; or

(4) be determined by the commission to qualify as an eligible property under criteria for inclusion in the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or a State Archeological Landmark;

(5) be determined by the commission to qualify as an education grant per subsection (n)(4) of this section; or

(6) be determined by the commission to qualify as an eligible curation management project.

(k) Eligible Applicants: Any public or private entity that is the owner, manager, lessee, maintainer, potential purchaser of an eligible property, or any public or private entity whose purpose includes historic preservation is eligible for fund assistance. If applicant is not the owner of the eligible property, written approval must be submitted by the owner at time of application agreeing to follow all rules and conditions of the commission required for receipt of funds.

(l) Grant applications.

(1) Application schedules and deadlines will be set by the commission. Application forms are to be received by the commission at its offices by these deadlines.

(2) To remain eligible for potential funding, applicants must complete the grant application form and include all required attachments as stated in the grant application instruction booklet.

(3) Grant applications that are incomplete and/or received after the application deadline are ineligible for funding.

(4) Grant applications with budgets showing a high percentage of administrative costs will be considered to be less competitive than applications having little or no administrative costs.

(m) Grant awards.

(1) Grants are awarded on a competitive basis to eligible properties or projects judged by the Commission to provide the best use of limited grant funds or on an emergency basis for properties or collections deemed highly significant and/or endangered by the Commission. The Executive Director, with the approval of the Executive Committee or Commission, will have the authority to award grants on an emergency basis in accordance with subsection (n)(5) of this section.

(2) Meeting the eligibility criteria and submissions of a grant application does not guarantee award of a grant in any amount.

(3) The commission may consider an appropriate distribution of funds across geographic area, discipline, or type of preservation grant when making awards.

(n) Types of preservation grants. Preservation grants shall be awarded only for:

(1) architectural or archeological development ("preservation," "restoration," "rehabilitation," and "reconstruction," as defined by the Secretary of the Interior's Standards for The Treatment of Historic Properties, latest edition or Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition); the costs include professional fees to prepare an acceptable project proposal and supervise actual construction, the costs of construction, and related expenses approved by the commission; or

(2) architectural or archeological acquisition of absolute ownership of an eligible property (that is what is defined in subsection (j) of this section) and related costs and professional fees approved by the commission; or

(3) planning costs necessary for the preparation of property specific historic structure reports, historic or cultural resource reports, preservation plans, maintenance studies, resource surveys, and/or feasibility studies as approved by the commission; or

(4) education costs necessary for training individuals and organizations about historic resources and historic preservation techniques; or.

(5) emergency costs necessary for the acquisition, evaluation, planning or repair of eligible property or projects as defined in subsection (j) of this section, to reduce or eliminate an immediate threat, resulting from a natural or man-made disaster. In consideration of the emergency nature, the commission may develop and adopt policy and procedures to implement this type of preservation grant with requirements separate from those in this rule.

(o) Eligible match for grant assistance. Applicants eligible to receive grant assistance shall provide a minimum of one dollar in cash match to each state dollar for approved project costs. The commission or the Executive Director upon designation by the Commission, by written policy, may approve in-kind match for projects involving highly significant and endangered properties. In exceptional circumstances and upon recommendation by the Executive Director of the Commission, the Commission may also waive the one to one cash match requirement completely, and/or approve any combination of matching cash or in-kind contribution percentages that the Commission deems appropriate.

(p) Initial grant allocations. Grants shall be allocated by vote of the Commission at large upon the recommendation of the Executive Committee at any duly noticed meeting of the commission. Reallocation of returned funds may be made by the Executive Committee of the commission upon the recommendation of the Executive Director of the commission.

(q) Final grant approval.

(1) Submission of project proposal, scope of work, or research design.

(A) For architectural projects to remain eligible for the grant allocation, an acceptable project proposal, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition, and consisting of plans/specifications, appraisal, unexecuted contract documents, and/or other material as required shall be submitted to the commission for review and approval. An acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.

(B) For archeological projects to remain eligible for the grant allocation, modifications to the scope of work and research design as required by the commission shall be submitted to the commission for review and approval.

(C) For educational projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission.

(D) For planning projects to remain eligible for the grant allocation, an acceptable project proposal must be submitted within three months of the allocation by the Commission unless otherwise approved in writing by the commission

(2) Review and approval of project proposal, scope of work, or research design. Upon completion of the review, approved projects will be notified of the assigned project start date, as well as the project expenses eligible for grant funding (allowable expenses) and those expenses not eligible (unallowable expenses).

(3) Commencement of project work. Project work as approved shall commence within 90 days of the assigned start date unless otherwise approved in writing by the commission. Approved project work may not begin before the assigned project start date, except for planning work required by the project proposal.

(4) Forfeiture of grant allocation. Failure to comply with the deadline for submission of an acceptable project proposal, or to meet the deadline for starting the project work, or to perform any part of the project work as approved, or to receive permission from the commission before commencing additional work may result in forfeiture of the full grant amount.

(r) Award of contract.

(1) Architectural development grant projects. All project work as approved in the project proposal shall be awarded subsequent to formal advertising for bids or other method approved in writing by the commission.

(2) Architectural planning grant projects. Contract for work described in the approved project proposal shall be awarded subsequent to interview with at least three professional firms, or other method approved in writing by the commission.

(s) Grant reimbursement procedures.

(1) Reimbursement of allowable project expenses. The only expenditures made before a start date that are reimbursable are for planning work required by the project proposal after the initial grant allocation notification.

(2) All payment of grant funds shall be strictly on a reimbursement basis with the exception of emergency grants in accordance with subsection (n)(5) of this section for which the Executive Committee or Commission may determine other payment methods. Reimbursement may be made after the competitive award of contract and submission of proof of all incurred allowable expenses in increments of at least $2,500 or at least 10% of the total project cost, whichever is lesser; or according to a schedule as determined by the Executive Director of the Commission; or at the completion of the project after an acceptable required completion report and/or planning documents have been received by the commission.

(3) Deadline for submission of requests for reimbursement. Allowable project expenses equal to two times the grant amount shall be incurred by the deadlines announced by the commission. Proof of those incurred expenses and corresponding payments shall be submitted to the commission by the deadlines announced by the commission.

(4) Forfeiture of grant. Failure to expend the full grant amount by the deadlines as announced by the commission or to submit to the commission all required material by the August 1 deadline or other deadline as announced by the commission may result in forfeiture of the remaining grant amount unless otherwise approved in writing by the commission.

(t) Deed restrictions/designations/conservation easements. Acquisition and development projects shall be encumbered, prior to reimbursement of any project expenses, with a protective designation, deed restriction, conservation easement (as defined in Title 8, Natural Resources Code, Chapter 183), or other appropriate covenants in favor of the state in a format acceptable to the commission. The deed restriction shall run with the land, be enforceable by the State of Texas, and its duration will be based upon the cumulative amount of grant assistance. The terms of the deed restrictions/designations/conservation easements shall be set by the commission.

(u) Repayment penalty for resale of property within one year of acquisition. If a property acquired with a preservation grant is sold within one year of the purchase date, the project owner may be required to repay the State of Texas the amount of the grant allocation.

(v) Completion reports for acquisition and development projects. Projects assisted with acquisition or development grants will be required to submit a project completion report with copies as determined by the commission, consisting of photo documentation and project summary prepared by the supervising project professional, to the commission no later than deadlines announced by the commission. Final reimbursement, in the amount of 10% of the grant allocation may be retained until receipt of an acceptable completion report by the commission.

(w) Professional standards.

(1) Project personnel for development and planning grants. Project proposal documents for development and planning grants shall be prepared by, and development work supervised by, appropriate personnel in compliance with the following criteria except as otherwise approved by the Executive Director:

(A) History. The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(B) Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

(i) at least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management of archeological collections;

(ii) at least four months of supervised field and analytic experience in general North American archeology; and

(iii) demonstrated ability to carry research to completion.

(iv) In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

(C) Architectural history. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

(i) at least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

(D) Architecture. The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

(2) Project personnel for acquisition grants. The single appraisal required for acquisition grants shall be prepared by a professional appraiser.

(3) Project personnel for education projects shall be approved by the Executive Director.

(x) Performance standards. All development and planning projects must be in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, latest edition. All archeological projects must be in conformance with the Secretary of the Interior's Standards for Preservation Planning and Standards for Archeological Documentation, latest edition.

(y) Compliance with requirements for accessibility to facilities by persons with disabilities. All projects must be in compliance with or in receipt of appropriate variance from the regulations issued by the Texas Department of Licensing and Regulation, under Texas Government Code Chapter 469, Elimination of Architectural Barriers.

(z) Compliance with Uniform Grant and Contract Management Act. All projects by political subdivisions of the state must be in compliance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603140
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 463-8817

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

SUBCHAPTER B. ORGANIZATION

16 TAC §60.64

The Texas Department of Licensing and Regulation ("Department") proposes amendments to an existing rule at 16 Texas Administrative Code Chapter 60, Subchapter B, §60.64 regarding the duration of advisory committees/boards/councils governed by the Texas Commission of Licensing and Regulation ("Commission").

The proposed amendments to §60.64 continue the existence of the Architectural Barriers Advisory Committee, Air Conditioning and Refrigeration Advisory Council, Auctioneer Education Advisory Board, Board of Boiler Rules, Elevator Advisory Board, Licensed Court Interpreter Advisory Board, Property Tax Consultants Advisory Council, Water Well Drillers Advisory Council, and the Weather Modification Advisory Committee. The proposed changes will extend the duration of each of these advisory bodies from the abolishment date set forth in the current rule to September 1, 2010. The proposed amendments to §60.64 also proposes to establish abolishment dates by rule for the Advisory Board on Barbering, Advisory Board on Cosmetology, Electrical Safety and Licensing Advisory Board, Medical Advisory Committee, and the Vehicle Protection Product Warrantor Advisory Board. The proposed changes will establish the duration of each of these advisory bodies to September 1, 2010.

The proposed amendments are necessary in order to comply with Texas Government Code, §2110.008 which authorizes a state agency that has established an advisory committee to designate the date on which the committee will automatically be abolished. The designation must be by rule. The committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date. The Commission relies on these advisory bodies to provide technical knowledge of their respective programs and industries, and receives expert advice from them on matters critical to the Commission's protection of public health, safety, and welfare. Additionally, if these advisory bodies are not continued in existence, state statutory requirements and duties imposed on each of these advisory bodies would not be fulfilled. The proposed changes set forth the period for which each advisory body will be continued noting the abolishment date for that advisory body.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amended section is in effect, the public benefit anticipated will be an opportunity to receive technical knowledge and expert advice from the advisory bodies on matters related to their respective industries that are critical to the Commission's protection of public health, safety, and welfare, and to fulfill statutory requirements and duties applicable to these advisory bodies.

The Commission does not anticipate any additional economic costs to licensees, small or micro-businesses, or other persons as a result of the proposed rule changes.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, §51.203 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department and Texas Government Code, Chapter 2110, §2110.008 which authorizes state agency's to continue the existence of an advisory committee beyond the four-year period following the date of creation of the committee.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1152, 1302, 1305, 1601 - 1603, 1802, 1901, 2052, and 2306; Texas Government Code, Chapters 57 and 469; Texas Health and Safety Code, Chapters 754 and 755; and Texas Agriculture Code, Chapters 301 and 302.

No other statutes, articles, or codes are affected by the proposal.

§60.64. Duration of Advisory Committee/Boards/Councils.

In accordance with Texas Government Code Annotated, §2110.008 the Commission establishes the following periods during which the advisory committee/boards/councils listed will continue in existence. The automatic abolishment date of each advisory committee/board/council will be the date listed for that committee/board/council unless the Commission subsequently establishes a different date:

(1) Advisory Board on Barbering--09/01/2010

(2) Advisory Board on Cosmetology--09/01/2010

(3) [~~(1)~~] Architectural Barriers Advisory Committee--09/01/2010 [~~09/01/2006~~];

(4) [~~(2)~~] Air Conditioning and Refrigeration Advisory Council--09/01/2010 [~~09/01/2006~~];

(5) [~~(3)~~] Auctioneer Education Advisory Board--09/01/2010 [~~09/01/2006~~];

(6) [~~(4)~~] Board of Boiler Rules--09/01/2010 [~~09/01/2006~~];

(7) Electrical Safety and Licensing Advisory Board--09/01/2010

(8) [~~(5)~~] Elevator Advisory Board--09/01/2010 [~~09/01/2006~~];

(9) [~~(6)~~] Licensed Court Interpreter Advisory Board--09/01/2010 [~~09/01/2006~~];

(10) Medical Advisory Committee--09/01/2010

(11) [~~(7)~~] Property Tax Consultants Advisory Council--09/01/2010 [~~09/01/2006~~];

(12) [~~(8)~~] Vehicle Protection Product Warrantor [~~Service Contract Providers~~] Advisory Board--09/01/2010 [~~09/01/2006~~];

(13) [~~(9)~~] Water Well Drillers Advisory Council--09/01/2010 [~~09/01/2006~~]; and

(14) [~~(10)~~] Weather Modification Advisory Committee--09/01/2010 [~~09/01/2006~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603179
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 463-7348

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CHAPTER 80. LICENSED COURT INTERPRETERS

16 TAC §80.25

The Texas Department of Licensing and Regulation ("Department") proposes amendments to an existing rule at 16 Texas Administrative Code, Chapter 80, §80.25, concerning continuing education requirements for licensed court interpreters. The Commission of Licensing and Regulation ("Commission") adopted §80.25 under Texas Occupations Code, §51.405, which directs the Commission to recognize, prepare, or administer continuing education programs for licensees. The rule as adopted requires licensees in the licensed court interpreter program to complete eight hours of Department-approved continuing education as a condition of renewing the license. Subsection (h) states that the rule applies to licenses expiring on or after September 1, 2006.

The proposed amendment to subsection (h) would make the rule apply to licenses expiring on or after September 1, 2007. This change would extend the time for licensees to comply with continuing education requirements. The change is needed because there have not been a sufficient number of continuing education providers seeking Department approval to offer continuing education courses to licensed court interpreters. Because of this, licensees needing to renew their licenses beginning September 1, 2006 will have difficulty meeting the continuing education requirements. The Department expects that the extension of time will allow for additional providers to be approved to offer continuing education to licensees.

The proposed new subsection (i) allows a licensee whose license expires before September 1, 2008, and who renews the license before September 1, 2008, up to two years prior to the license expiration date in which to complete required continuing education hours, in the case of a timely renewal, or up to two years prior to the date of renewal to complete the hours, in the case of a late renewal. The purpose of this provision is to prevent harm to licensees who may have completed continuing education courses in anticipation of renewing the license on or after September 1, 2006. The Department believes that this provision will make for a smoother transition to the new beginning date for continuing education compliance.

This rule is necessary to implement Texas Occupations Code, §51.405, which requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no impact to costs or revenues of the State in enforcing or administering the amended rule. There will be no impact to costs or revenues of local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amended rule is in effect, the public benefit will be that licensees will be subject to reasonable continuing education requirements which will not unduly interfere with the services they provide to the judicial system and the public.

Mr. Kuntz has determined that there will be no effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51, which authorize the Department to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the proposal are those set forth in Texas Government Code, Chapter 57 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§80.25. Continuing Education.

(a) - (g) (No change.)

(h) This section shall apply to licenses issued under Texas Government Code, Chapter 57, Subchapter C, that expire on or after September 1, 2007 [~~September 1, 2006~~].

(i) Notwithstanding subsection (c), a licensee whose license expires before September 1, 2008, and who renews the license before September 1, 2008, shall have:

(1) for a timely renewal, up to two years prior to the expiration date of the license in which to complete continuing education hours required for that renewal; or

(2) for a late renewal, up to two years prior to the date of renewal in which to complete continuing education hours required for that renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603180
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers proposes an amendment to §137.51, relating to General Practice. The proposed amendment will remove an unnecessary word.

The proposed rule change removes the word "this" at the end of the sentence.

C.W. Clark, P.E., Director of Compliance & Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made.

Comments may be submitted no later than 30 days after the publication of this notice to C. W. Clark, P.E., Director of Compliance & Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§137.51. General Practice.

(a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license and on all firms authorized to offer or perform engineering services in [~~this~~] Texas.

(b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under §1001.502 of the Act.

(d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §137.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional engineering services.

(e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm, sole-proprietor, or other business entity if registered pursuant to the requirements of Chapter 135 of this title (Relating to Firms and Sole Proprietorships).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2006.

TRD-200603095
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.57

The Texas Board of Professional Engineers proposes an amendment to §137.57, relating to Engineers Shall be Objective and Truthful. The proposed amendment will add clarification to the specific and individual violations as it relates to fraudulent, deceitful or misleading.

The proposed rule change separates the three violations so that they can be cited and/or sanctioned independently or in total.

C.W. Clark, P.E., Director of Compliance & Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made.

Comments may be submitted no later than 30 days after the publication of this notice to C. W. Clark, P.E., Director of Compliance & Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment. Board rule §139.35 is affected by the breakout of these three violations.

§137.57. Engineers Shall be Objective and Truthful.

(a) Engineers shall issue statements only in an objective and truthful manner. Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.

(b) The issuance of oral or written assertions in the practice of engineering shall not be [~~which are~~]

(1) fraudulent,

(2) deceitful, or

(3) misleading or shall not [~~on which~~] in any manner whatsoever tend to create a misleading impression [~~constitutes misconduct~~].

(c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §137.61 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2006.

TRD-200603096
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.59

The Texas Board of Professional Engineers proposes an amendment to §137.59, relating to Engineers' Actions Shall Be Competent. The proposed amendment will clarify the rule by removing the reference to careful and diligent manner and conformance parameters from this rule, which is related to competence.

The proposed rule change removes the careful and diligent reference and the conformance parameters. These are added to §137.63, where it defines the engineer's responsibilities to the profession.

C.W. Clark, P.E., Director of Compliance & Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made.

Comments may be submitted no later than 30 days after the publication of this notice to C. W. Clark, P.E., Director of Compliance & Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment. Board rules §139.35 and §137.63 are affected by this change.

§137.59. Engineers' Actions Shall Be Competent.

(a) Engineers shall practice only in their areas of competence[~~, in a careful and diligent manner, and in conformance with standards, laws, codes, and rules and regulations applicable to engineering practice~~].

(b) The engineer shall not perform any engineering assignment for which the engineer is not qualified by education or experience to perform adequately and competently. However, an engineer may accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by [~~legally~~] qualified licensed professionals, consultants, associates, or employees.

(c) The engineer shall not express an engineering opinion in deposition or before a court, administrative agency, or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion. Engineering opinions which are rendered as expert testimony and contain quantitative values shall be supported by adequate modeling or analysis of the phenomena described.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2006.

TRD-200603097

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 440-7723

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22 TAC §137.63

The Texas Board of Professional Engineers proposes an amendment to §137.63, relating to Engineers' Responsibility to the Profession. The proposed amendment will add "standards" to the list of applicable professional practice requirements in subsection (b)(1) and adds a new paragraph (6) to subsection (b), which addresses practicing in a careful and diligent manner.

The proposed rule change moves the careful and diligent reference and the conformance parameters where it defines the engineer's responsibilities to the profession, §137.63.

C.W. Clark, P.E., Director of Compliance & Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made.

Comments may be submitted no later than 30 days after the publication of this notice to C. W. Clark, P.E., Director of Compliance & Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment. Board rule §139.35 is affected by this change.

§137.63. Engineers' Responsibility to the Profession.

(a) Engineers shall engage in professional and business activities in an honest and ethical manner. Engineers should strive to promote responsibility, commitment, and ethics both in the education and practice phases of engineering. They should attempt to enhance society's awareness of engineers' responsibilities to the public and encourage the communication of these principles of ethical conduct among engineers.

(b) The engineer shall:

(1) endeavor to meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, [~~or~~] ordinances, or standards in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services; and

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.

(4) act as faithful agent for their employers or clients.

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.

(6) practice engineering in a careful and diligent manner.

(c) The engineer shall not:

(1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;

(5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment;

(6) solicit professional employment in any false or misleading advertising;

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 8, 2006.

TRD-200603098
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 440-7723

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1, §165.6

The Texas Medical Board proposes an amendment to §165.1 and new §165.6, concerning Medical Records.

The amendment to §165.1 adds requirements that written consents for treatment or surgery be included in a patient's medical records. New §165.6 provides a form for parental consent for an abortion to be performed on an unemancipated minor, as required by S.B. 419.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously withdraws the proposal of §165.1 and §165.6, which was published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3468).

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the amendment and new section are in effect there will be no fiscal implications to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the sections as proposed.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to assure the public that their consent to medical treatment and surgery will be included in their medical records and to provide a standard form for parental consent for an abortion. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Loris Jones, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment and new section are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. and §164.052(c), which requires the Texas Medical Board to adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor.

The following statutes, articles or codes are affected by this proposal: §164.052(c), Texas Occupations Code.

§165.1. Medical Records.

(a) Contents of Medical Record. Each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) - (6) (No change.)

(7) any written consents for treatment or surgery requested from the patient/family by the physician.

(8) [~~(7)~~] Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(9) [~~(8)~~] Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(10) [~~(9)~~] Records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(11) [~~(10)~~] The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (11) [~~(10)~~] of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) (No change.)

§165.6. Medical Records Regarding an Abortion on an Unemancipated Minor.

(a) As used in this section:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus (as defined at §33.001, Texas Family Code).

(2) "Unemancipated minor" means a minor who is not 18 years, unmarried and has not had the disabilities of minority removed under Chapter 31, Texas Family Code (as defined at §33.001, Texas Family Code).

(b) In the case of an unemancipated minor patient on whom a physician plans to perform an abortion, the physician shall obtain and maintain in the medical records one of the following:

(1) the written consent of one of the patient's parents, managing conservator, or legal guardian, in accordance with §164.052(a)(19), Medical Practice Act;

(2) a court order authorizing the minor to consent to the abortion, in accordance with §33.003 or §33.004, Texas Family Code;

(3) an affidavit of the physician authorizing the physician to perform the abortion as if the court had issued an order granting the application or appeal, in accordance with §33.005, Texas Family Code; or

(4) indications supporting the physician's judgment, if the physician concludes, on the basis of good faith clinical judgment, that a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the patient's parent, managing conservator, or legal guardian, in accordance with §164.052(a)(19), Medical Practice Act. The physician shall also maintain in the medical records a copy of the certification to the Department of State Health Services, as required by §33.002, Texas Family Code.

(c) Except in the case of a medical emergency, the physician shall obtain and maintain in the medical records a written consent signed by the patient that includes the requirements set forth in §171.011 and §171.012, Texas Health and Safety Code.

(d) The physician must use due diligence in determining that any person signing a written consent for an abortion on an unemancipated minor is, in fact, who the person purports to be. The physician may not perform the abortion unless the written consent is notarized. The physician must use due diligence to determine that any woman on which he or she performs an abortion who claims to have reached the age of majority or to have had the disabilities of minority removed has, in fact, reached the age of majority or has had the disabilities of minority removed.

(e) The physician shall maintain the medical records required by this section until the later of the fifth anniversary of the date of the patient's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

(f) Pursuant to §164.052(c), Medical Practice Act, the board adopts the following form for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor:
Figure: 22 TAC §165.6(f)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603143
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-7016

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CHAPTER 179. INVESTIGATIONS

22 TAC §179.8

The Texas Medical Board proposes new §179.8, concerning Investigations.

The new §179.8 provides a procedure for instituting voluntary random alcohol and drug screening pending completing of an investigation regarding impairment.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. While payment of any fees under this rule would be voluntary, individuals would be required to pays fees of specimen collection and testing.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to provide a procedure to protect the public by instituting alcohol and drug testing at the earliest possible date before the completion of the investigation regarding allegations of impairment. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Loris Jones, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides that the Texas Medical Board may adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 154.056(a)(1), Texas Occupations Code is affected by this proposal.

§179.8. Alcohol and Drug Screening During Investigation for Substance Abuse.

(a) To protect the public, it is important that the board initiate, as soon as possible, a program of alcohol and drug screening for any licensee that shows signs of impairment based on substance abuse. In addition, an impaired licensee who sincerely desires to begin recovery will benefit from a program of alcohol and drug screening, because successful compliance with the program will be evidence of cooperation with the board as well as evidence of recovery. The board adopts this rule to encourage licensees who may be impaired to submit to the Board's program of alcohol and drug screening as soon as possible.

(b) If the agency has cause to believe, either through a self-report or otherwise, that a licensee has used alcohol or drugs in an intemperate manner, the Executive Director may offer the licensee the opportunity to participate in the board's program for alcohol and drug screening during an investigation.

(c) A licensee who wishes to accept the offer must submit an acceptance on a form approved by the Executive Director that, at a minimum, includes the agreement that the licensee will:

(1) abstain from the use of alcohol and drugs;

(2) submit to, comply with, and pay any costs associated with the board's program for alcohol and drug screening;

(3) not self-prescribe or prescribe for the licensee's immediate family any controlled substance or dangerous drug with potential for addiction or abuse or dispense, administer, or authorize any such drug except in compliance with the prescription, orders, and direction of another physician for legitimate medical purposes; and

(4) agree that the licensee's compliance or non-compliance with the terms of the agreement and the program of alcohol and drug screening may be considered in any disciplinary or rehabilitative action by the board.

(d) The offer, acceptance, and all documents and activities of the agency relating to compliance with the agreement contained in the acceptance that are created by or provided to the agency shall be considered to be investigative information and privileged and confidential, in accordance with §164.007(c), Texas Occupations Code.

(e) The offer to a licensee to submit to alcohol and drug screening shall not limit the authority of the board to initiate a temporary suspension proceeding, in accordance with §164.059, Texas Occupations Code, if the investigation produces evidence that the licensee would, by the licensee's continuation in practice, constitute a continuing threat to the public welfare.

(f) If the licensee does not accept the offer by the Executive Director, the agency shall expedite an investigation to allow the board to take disciplinary or rehabilitative action as soon as possible, if the investigation produces evidence that the licensee is impaired.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603144
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.12

The Texas Medical Board proposes new §193.12 concerning Standing Delegation Orders.

The new §193.12 provides that physicians must, to the extent possible, offer the opportunity to receive certain immunizations, as required by S.B. 1330.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the sections will be to provide the public with greater opportunity to receive immunization for pneumococcal and influenza. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Loris Jones, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides that the Texas Medical Board may adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure, and Health and Safety Code §161.0052, which requires the Texas Medical Board to adopt rules to require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office.

Section 161.0052, Health and Safety Code is affected by this proposal.

§193.12. Immunization of Persons Over 65 by Physician's Offices.

(a) A physician responsible for the management of a physician's office that provides ongoing primary or principal medical care to persons over 65 years of age ("elderly persons") shall offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides that it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(b) The physician's office must offer:

(1) the influenza vaccine in October and November, and if the vaccine is available, December; and

(2) the pneumococcal vaccine year-round.

(c) The physician must adopt a protocol providing that any person administering a vaccine in the physician's office must:

(1) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(2) administer the vaccine under the protocol after an assessment has been made for contraindications; and

(3) permanently document the vaccination in the elderly person's medical records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603145
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-7016

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4, §283.7

The Texas State Board of Pharmacy proposes amendments to §283.4 and §283.7, concerning Internship Requirements and Examination Requirements. The amendments, if adopted, will require applicants to submit fingerprint information in order for the Board to access criminal history information.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rules will be to ensure that only qualified individuals are working in pharmacies as pharmacists and interns. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the individual fee. Individuals who are required to comply with the amended sections will be required to pay a fee of approximately $50 for accessing criminal history information which includes the cost of submitting fingerprint information and paying associated costs to the Texas Department of Safety and Federal Bureau of Investigations.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §411.084 as authorizing the agency to obtain criminal history information from the Federal Bureau of Investigations.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 411, Government Code.

§283.4. Internship Requirements.

(a) - (b) (No change.)

(c) Student Internship Programs.

(1) Texas colleges of pharmacy internship programs.

(A) - (B) (No change.)

(C) Internship experience shall be gained under:

(i) - (ii) (No change.)

(iii) a healthcare professional preceptor.

(D) - (G) (No change.)

(2) Internship experience acquired by student-interns not in a Texas College of Pharmacy Internship Program.

(A) A person may be designated a student-intern provided he/she meets all of the following requirements:

(i) (No change.)

(ii) is enrolled in the professional sequence of a college of pharmacy whose professional degree program has been accredited by ACPE and approved by the board; [and]

(iii) has successfully completed the first professional year and a minimum of 30 credit hours of work towards a professional degree in pharmacy; and[.]

(iv) has met all requirements necessary in order for the Board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) - (C) (No change.)

(3) (No change.)

(d) Extended-internship program.

(1) (No change.)

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must met all requirements necessary in order for the Board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) [~~(2)~~] The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a board-approved preceptor who is licensed by the board.

(4) [~~(3)~~] The extended internship remains in effect until the earlier of the following occurs:

(A) the failure of the extended-intern to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation or Foreign Pharmacy Graduate Equivalency Commission (FPGEC) certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Jurisprudence Examinations specified in this section; or

(C) the failure of the extended-intern to complete the requirements for licensure within two years after passing the required examination(s).

(5) [~~(4)~~] An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) - (f) (No change.)

§283.7. Examination Requirements.

Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the NAPLEX. The examination requirements shall be as follows:

(1) Prior to taking the required examination, the applicant shall meet: [~~the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements).~~]

(A) the educational and age requirements as set forth in §283.3 of this title (relating to Educational and Age Requirements); and

(B) all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs.

(2) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603164
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy proposes amendments to §291.1, concerning Pharmacy License Application. The amendments, if adopted, will require applicants to submit fingerprint information in order for the Board to access criminal history information.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be to ensure that only qualified individuals own pharmacies. The effect on large, small or micro-businesses (pharmacies) and individuals who are required to comply with the amended section will be required to pay a fee of approximately $50 for accessing criminal history information which includes the cost of submitting fingerprint information and paying associated costs to the Texas Department of Safety and Federal Bureau of Investigations.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §411.084 of the Government Code. The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §411.084 as authorizing the agency to obtain criminal history information from the Federal Bureau of Investigations.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Chapter 411, Government Code.

§291.1. Pharmacy License Application.

(a) - (c) (No change.)

(d) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned by a partnership or a closely held corporation for each managing officer.

(e) [~~(d)~~] A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(f) [~~(e)~~] For purpose of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(g) [~~(f)~~] Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(h) [~~(g)~~] If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (g) [~~(f)~~] of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603165
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees. The amendments, if adopted, will decrease pharmacy license fees based on revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended section as follows:

Revenue

FY2006 - No effect

FY2007 - (27,972)

FY2008 - (38,664)

FY2009 - (33,564)

FY2010 - (38,664)

There are no anticipated fiscal implications for local government.

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The fiscal impact on individuals, large, small or micro-businesses (pharmacies) will be a decrease of $12.00 for an initial pharmacy license and a decrease of $12.00 biennial fee for the renewal of a pharmacy license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be $329 [~~$341~~] for a two year registration and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) - (3) (No change.)

(b) (No change.)

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacy license shall be $329 [~~$341~~] for processing the application and issuance of the pharmacy license as authorized by the Act §554.006;

(2) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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22 TAC §291.28

The Texas State Board of Pharmacy proposes new §291.28, concerning Patient Access to Confidential Records. The section, if adopted, will require pharmacies to provide patients with their confidential records.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that patients have access to their confidential records. Individuals, small or large businesses or other entities that request records from pharmacies may be required to pay a fee which would be based on the quantity of records obtained.

Comments on the proposed new rule may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas, 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The new rule is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.28. Patient Access to Confidential Records.

(a) Access to confidential records. A pharmacy shall comply with the request of a patient or a patient's agent to inspect or obtain a copy of the patient's confidential records maintained by the pharmacy, as defined in §551.003(10) of the Act.

(b) Form of request. The pharmacy may require a patient or a patient's agent to make requests for confidential records in writing, provided such a requirement has been communicated to the patient or patient's agent.

(c) Timely action by pharmacy. The pharmacy must respond to a request for confidential records in a timely manner.

(1) The pharmacy must respond to a request for confidential records no later than thirty days after receipt of the request by providing a copy of the records or, with the consent of the patient or patient's agent, a summary or explanation of such information. If the pharmacy is unable to take such action within thirty days of receiving the request, the pharmacy may extend the time for such action by no more than thirty days, provided that:

(A) the pharmacy provides the patient with a written statement of the reasons for the delay and the date by which the pharmacy will respond to the request; and

(B) the pharmacy shall have only one such extension of time.

(2) The pharmacy must provide confidential records as requested by the patient or the patient's agent by either:

(A) mailing a copy of the records; or

(B) at the patient's request, arranging for a convenient time and place for the individual to inspect or obtain a copy of the records.

(3) Access to confidential records may expedited at the request of the patient or the patient's agent if there is a medical emergency. The pharmacy must respond to a request for expedited access to confidential records within 24 hours if the records are maintained at the pharmacy or within 72 hours if the records are stored off-site. The pharmacy may charge a reasonable fee, in addition to the fees outlined in subsection (d) of this section, of no more than $25.00 for expediting a request for access to confidential records.

(d) Fees. The pharmacy may charge a reasonable, cost-based fee for providing a copy of confidential records requested by a patient or a patient's agent or, with the consent of the patient or patient's agent, a summary or explanation of such information.

(1) A reasonable fee shall be a charge of no more than $25.00 for the first twenty pages and $0.50 per page for every page thereafter. A reasonable fee shall include only the cost of:

(A) copying, including the cost of supplies for and labor of copying;

(B) postage, when the individual has requested the records be mailed; and

(C) preparing an explanation or summary of the protected health information, if appropriate and consented to by the patient or patient's agent.

(2) If an affidavit is requested certifying that the information is a true and correct copy of the records, a reasonable fee of no more than $15.00 may be charged for executing the affidavit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603167
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy proposes amendments to §291.93, concerning Operational Standards. The amendments, if adopted, will permit Class D (Clinic) pharmacies with expanded

formularies to have antipsychotic medications under certain conditions.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Dodson has also determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule be to allow antipsychotic medication on the formulary of a Class D pharmacy which has approval for an expanded formulary. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with the amended section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §§551.002, 554.051, and 560.052 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §560.052 as authorizing the agency to establish standards for licensing as a Class D pharmacy, including the types of drugs allowed in the formulary.

The statutes affected by the amendment: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.93. Operational Standards.

(a) - (d) (No change.)

(e) Drugs and devices.

(1) Formulary.

(A) - (B) (No change.)

(C) The formulary shall not contain the following drugs or types of drugs:

(i) Nalbuphine (Nubain) and[~~;~~]

~~*f(ii)* antipsychotics; and]~~

(ii) [~~(iii)~~] Schedule I-V controlled substances.

(D) (No change.)

(2) - (7) (No change.)

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603168
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments, if adopted, will decrease pharmacist license fees based on revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue

FY2006 - No effect

FY2007 - (119,340)

FY2008 - (140,352)

FY2009 - (149,208)

FY2010 - (149,952)

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the individual fee. Economic cost to persons who are required to comply with the amended rule will be a decrease of $12.00 for an initial pharmacist license and a decrease of $12.00 biennial fee for the renewal of a pharmacist license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) (No change.)

(b) Initial License Fee.

(1) The fee for the initial license shall be $191 [~~$203~~] for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) - (3) (No change.)

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacist license shall be $191 [$203] for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) (No change.)

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603169
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4, concerning Fees. The amendments, if adopted, will decrease pharmacy technician registration fees based on revenue projections.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue

FY2006 - No effect

FY2007 - (26,500)

FY2008 - (38,000)

FY2009 - (38,000)

FY2010 - (38,000)

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the individual fee.

Economic cost to persons who are required to comply with the amended rule will be a decrease of $2.00 for an initial registration and a decrease of $2.00 biennial fee for the renewal of a registration.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 28, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.4. Fees.

(a) (No change.)

(b) Pharmacy technician.

(1) (No change.)

(2) Initial Registration Fee.

(A) The fee for initial registration shall be $54 [$56] for a two year registration and is composed of the following fees:

(i) $46 [$48] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(ii) - *(iii)* (No change.)

(B) (No change.)

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be $54 [$53] and is composed of the following:

(A) $46 [$48] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) - (C) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603170
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8028

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.4

The Polygraph Examiners Board proposes an amendment to §391.4, concerning State Examinations for Polygraph Examiners License.

Elsewhere in this issue of the *Texas Register*, the Polygraph Examiners Board contemporaneously withdraws the proposal of

§391.4, which was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2369). The rule is re-proposed in order to encompass all of the amendments simultaneously.

Section 391.4(1) and (8) are amended for general grammatical clean-up and so that the Board may be better prepared with scheduling.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing the amendment as proposed.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an updated rule. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

No other statute, code or article is affected by the amendment.

§391.4. State Examinations for Polygraph Examiners License.

State examinations for polygraph examiner license shall conform with the following.

(1) When an intern becomes eligible, as provided by law, the intern may take the state examination for a polygraph examiners license under the direct supervision of the Board. The intern can take the academic and scenario portions of the licensing examination under the Executive Officer's [~~Director~~] supervision any time after successful graduation from a Board approved polygraph school. The oral board portion of the licensing examination can only be taken after the intern has completed five (5) full months of internship under a sponsoring, licensed examiner. At least Thirty (30) days before the Oral Board Licensing Examination an intern must have submitted all required documents to the Board Office and must have completed 30 polygraph examinations; otherwise, the intern will not be able to take Oral Board portion of the licensing examination until the next scheduled Board Meeting.

(2) Such examinations shall be held at Austin, Texas, or at other locations designated by the Board. Persons eligible to take the examination will be notified of the time, date, and location.

(3) Examinations shall be held at the discretion of the Board, the dates, locations, and times being designated by the Board.

(4) Examinations shall consist of and include questions relating to those topics set forth in the internship training schedule and a presentation of actual polygraph examinations conducted by the applicant during their internship training for Board evaluation.

(5) The grades by all grading members on the licensing examinations will be totaled and averaged and a grade of seventy percent (70%) must be obtained in order to pass.

(6) Failure to pass any portion of the examination shall require such person to retake that portion failed. No polygraph examiner's license shall be issued until the intern has passed all portions of the examination.

(7) Persons failing any portion(s) thereof may retake the portion(s) at the next scheduled examination date, provided that such person is qualified to retake the portion(s) under the law or as set forth herein under the rules and regulations pertaining to interns. Provided further that if any person taking and failing any portion of such examination for the third time, such person shall not be eligible to take another examination until the expiration of twelve (12) months from the date of the last examination, providing such person is otherwise qualified to take such examination by law and under the applicable regulations.

(8) When an intern fails the original licensing examination, or any portion thereof, the intern shall not be permitted to engage in any actual polygraph testing until such time as the intern and the sponsor have reviewed the failing examination with a member of the Board or a member of the Board's staff at the discretion of the Presiding Officer [~~presiding officer~~]. The time, date, and place of the review will be designated by the Board or its staff. The sponsor shall furnish the Presiding Officer [~~presiding officer~~] or their designated representative with a written affidavit stating what corrective action will be taken or an oral discussion of those corrective actions acceptable to the Presiding Officer [~~presiding officer~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603065
Frank DiTucci
Executive Director
Polygraph Examiners Board
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 424-2058

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER F. REPTILE-ASSOCIATED SALMONELLOSIS

25 TAC §169.121

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.121, concerning warnings retail pet stores must provide relating to reptile-associated salmonellosis.

BACKGROUND AND PURPOSE

This rule is necessary to comply with Health and Safety Code, Chapter 81, Subchapter I, "Animal-Borne Diseases," which requires retail pet stores to post signs and distribute warnings relating to reptile-associated salmonellosis to purchasers of reptiles. The signs and warnings are to be in accordance with the form and content designated by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.121 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

After carefully considering the alternatives, the department believes the rule as amended is the best method of implementing the statute, and informing, without unduly alarming, the pet-buying public.

SECTION-BY-SECTION SUMMARY

The amendment to §169.121 is necessary to comply with the mandated four-year rule review, update the legacy agency name, and make the guidelines for warning signs consistent with the Centers for Disease Control and Prevention (CDC) recommendations.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be the increased public awareness of the risk involved with having reptiles as pets, as it pertains to reptile-associated salmonellosis.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, 1100 West 49th Street, Austin, Texas 78756, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §81.352, which requires the department to adopt a rule governing the form and content of the sign and written warning relating to reptile-associated salmonellosis; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects Health and Safety Code, Chapters 81 and 1001; and Government Code, Chapter 531. Review of the rule implements Government Code, §2001.039.

§169.121. Reptile-Associated Salmonellosis.

(a) The Health and Safety Code, §81.352, requires retail stores that sell reptiles to post warning signs and distribute written warnings regarding reptile-associated salmonellosis to purchasers in accordance with the form and content designated by the Department of State Health Services [~~Texas Department of Health~~].

(b) The warning signs must meet the following guidelines.

(1) - (2) (No change.)

(3) At a minimum, the contents of the sign must include the following recommendations for preventing transmission of *Salmonella* from reptiles to humans.

(A) (No change.)

(B) Persons at increased risk for infection or serious complications of salmonellosis (e.g., children aged <5 years and immunocompromised persons) should avoid contact with reptiles and any items that have been in contact with reptiles.

(C) Reptiles [~~Pet reptiles~~] should be kept out of households that include [~~where~~] children aged <5 years or immunocompromised persons [~~live~~]. Families expecting a new child should remove any [~~the pet~~] reptile from the home before the infant arrives.

(D) Reptiles [~~Pet reptiles~~] should not be allowed [~~kept~~] in childcare centers.

(E) Reptiles [~~Pet reptiles~~] should not be allowed to roam freely throughout the home or living area.

(F) Reptiles [~~Pet reptiles~~] should be kept out of kitchens and other food-preparation areas to prevent contamination. Kitchen sinks should not be used to bathe reptiles or to wash their dishes, cages, or aquariums. If bathtubs are used for these purposes, they should be cleaned thoroughly and disinfected with bleach.

(4) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2006.

TRD-200603055
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER G. CAGING REQUIREMENTS AND STANDARDS FOR DANGEROUS WILD ANIMALS

25 TAC §169.131

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §169.131, concerning caging requirements and standards for the keeping and confinement of dangerous wild animals.

BACKGROUND AND PURPOSE

This rule is necessary to comply with Health and Safety Code, Chapter 822, Subchapter E, "Dangerous Wild Animals," which requires owners of a dangerous wild animal to keep and confine the animal in accordance with the caging requirements and standards established by the department.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 169.131 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

After carefully considering the alternatives, the department believes the rule as amended is the best method of implementing the statute, providing for enclosures that protect public safety and provide a safe and secure enclosure for the animal; without undue burden on owners.

SECTION-BY-SECTION SUMMARY

The amendment to §169.131 is necessary to comply with the mandated four-year rule review and to clarify the minimum caging requirements relating to the structures and outdoor facilities containing dangerous wild animals.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be that it enhances public health and safety by keeping dangerous wild animals contained in safe, healthy, and humane environments.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, 1100 West 49th Street, Austin, Texas 78756, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §822.111, which requires the department to establish the caging requirements and standards for the keeping and confinement of dangerous wild animals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects Health and Safety Code, Chapters 822 and 1001; and Government Code, Chapter 531. Review of the rule implements Government Code, §2001.039.

§169.131. Caging Requirements and Standards for Dangerous Wild Animals.

(a) Definitions.

(1) Key components of facilities for confining dangerous wild animals and restricting public contact with the animals are the primary enclosure and the perimeter fence.

(A) Primary enclosure - Any structure used to immediately restrict an animal(s) [~~animal~~] to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

(B) (No change.)

(2) Where specified in this section, primary enclosures for dangerous wild animals shall be equipped to provide for a safe, healthy, and humane environment for [~~the protection and welfare of~~] the animals; prevent escape by the animals; and protect and enhance the public's health and safety [~~and the safety of handlers and the public~~]. Such equipment includes, but is not limited to: [~~.~~]

(A) (No change.)

(B) Shelter, nest box, or den - A structure that protects the animal(s) [~~animal~~] from the elements (weather conditions). Such structures may vary in size depending on the security and biological needs of the species. The structures are particularly described as follows.

(i) Shelter - A structure that provides protection from the elements and from extremes in temperature that are detrimental to the health and welfare of the animal(s) [~~animal~~]. When vegetation and landscaping is available to serve as protection from the elements, access to a shelter shall also be provided during inclement weather conditions. Such shelter shall be attached to or adjacent to the primary enclosure.

(ii) (No change.)

(C) - (D) (No change.)

(b) General Requirements.

(1) Primary enclosures for housing dangerous wild animals shall be sufficiently strong to prevent escape and to protect the animal(s) [~~animal~~] from injury and shall be equipped with structural safety barriers to prevent any public contact with the animal(s) [~~animal~~]. Structural barriers may be constructed from materials such as fencing, landscaping, or close-mesh wire, provided that materials used are safe and effective in preventing public contact.

(2) (No change.)

(3) A perimeter fence, sufficient to deter entry by the public, shall be a minimum of 8 feet in height and shall completely surround the premises where the animal(s) is [~~animals are~~] housed or exercised outdoors. Perimeter fences constructed of materials, such as chain link or welded wire, that allow objects to be passed through them shall be at least 3 feet from the primary enclosure or exercise area.

(c) Structural Requirements for Primary Enclosures. In addition to the size and equipment requirements for primary enclosures, dangerous wild animals shall be caged in accordance with the following requirements.

(1) All primary enclosures shall be equipped with a safety entrance. Such entrances shall include a double-door mechanism, interconnecting cages, a lock-down area, or other comparable devices that will prevent escape and safeguard the keeper. Safety entrances shall be constructed of materials that are of equivalent strength or greater than [~~as~~] that prescribed for cage construction for that particular species. The area occupied by the safety entrance shall be in addition to the space requirements for the primary enclosure.

(2) All primary enclosures constructed of chain link or other approved materials shall be well braced and securely anchored at or below ground level to prevent escape by digging or erosion. Metal clamps, ties, or braces used in the construction of enclosures shall be of strength equivalent to or greater than the material required for primary enclosure construction for the particular species.

(3) Additional minimum requirements for specific species and hybrids of those species shall be as follows.

(A) Chimpanzees, gorillas, and orangutans.

(i) Outdoor facilities - Construction material shall consist of steel bars, 2-inch galvanized pipe, masonry block, or their strength equivalent or greater.

(ii) Indoor facilities - Potential escape routes shall be equipped, at minimum, with steel bars, 2-inch galvanized pipe, or equivalent.

(B) - (C) (No change.)

(d) Primary Enclosure Size and Equipment Requirements. No dangerous wild animal shall be confined in any primary enclosure that contains more individual animals than specified in this section, is smaller in dimension than specified in this section, or is not equipped as specified in this section. The area occupied by pools, ponds, or lakes shall be in addition to the space requirements for the primary enclosure.

(1) Primates.

(A) - (C) (No change.)

(D) Requirements for specific primate species are as follows:

(i) Baboons. For one animal the primary enclosure shall have a minimum floor area of 100 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(ii) Chimpanzees. For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(iii) Orangutans. For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 10 feet high. For each additional animal primary enclosure size shall be increased by at least 200 square feet.

(iv) Gorillas. For one animal the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 200 square feet.

(2) Wild felines.

(A) (No change.)

(B) Each primary enclosure shall have [~~an~~] accessible devices [~~device~~] to provide physical stimulation or manipulation compatible with the species. Each [~~Such~~] device shall be noninjurious and may include, but is not limited to, boxes, balls, bones, barrels, drums, rawhide materials, or pools. The area occupied by a pool shall be in addition to the space requirements for the primary enclosure.

(C) Each primary enclosure shall have an elevated platform(s) [~~platform~~] large enough to accommodate all animals in the enclosure simultaneously.

(D) Each primary enclosure shall have at least one [~~a~~] claw log.

(E) Requirements for specific species of wild felines are as follows:

(i) Lions, tigers, and cheetahs.

(I) For one animal the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 150 square feet.

(II) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 10 feet high with a 45 degree inward angle overhang at least 2 feet wide or jump walls at least 12 feet high without an overhang. The inward angle fencing shall be made of the same material as the vertical fencing.

(ii) Jaguars, leopards, and cougars.

(I) For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(iii) Bobcats, lynxes, ocelots, caracals, and servals. For one animal the primary enclosure shall have a minimum floor area of 80 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 40 square feet.

(3) Bears.

(A) (No change.)

(B) Each primary enclosure shall have [~~an~~] accessible devices [~~device~~] to provide physical stimulation or manipulation compatible with the species. Each [~~Such~~] device shall be noninjurious and may include, but is not limited to, boxes, balls, bones, barrels, drums, climbing apparatus, or foraging items.

(C) Each primary enclosure shall have an elevated platform(s) for resting that will accommodate all animals in the enclosure simultaneously.

(D) Requirement for specific types of bears are as follows:

(i) Sun bears.

(I) For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(II) (No change.)

(ii) Black bears and Asiatic bears.

(I) For one animal the primary enclosure shall have a minimum floor area of 300 square feet with a wall or fence at least 8 feet high. For each additional animal primary enclosure size shall be increased by at least 150 square feet.

(II) (No change.)

(iii) Brown bears and polar bears.

(I) For one animal the primary enclosure shall have a minimum floor area of 400 square feet with a wall or fence at least 10 feet high. For each additional animal primary enclosure size shall be increased by at least 200 square feet.

(II) - *(III)* (No change.)

(4) Coyotes and jackals.

(A) (No change.)

(B) Each primary enclosure shall have [~~an~~] accessible devices [~~device~~] to provide physical stimulation or manipulation compatible with the species. Each [~~Such~~] device shall be noninjurious and may include, but is not limited to, boxes, balls, bones, barrels, drums, rawhide materials, or pools. The area occupied by a pool shall be in addition to the space requirements for the primary enclosure.

(C) For one animal the primary enclosure shall have a minimum floor area of 150 square feet with a wall or fence at least 6 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(D) Each primary enclosure shall have an elevated platform(s) [~~platform~~] large enough to accommodate all animals in the enclosure simultaneously.

(E) Uncovered outdoor primary enclosures over 1,000 square feet shall have vertical jump walls at least 8 feet high with a 45 degree inward angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward angle fencing shall be made of the same material as the vertical fencing.

(5) Hyenas.

(A) For one animal the primary enclosure shall have a minimum floor area of 200 square feet with a wall or fence at least 6 feet high. For each additional animal primary enclosure size shall be increased by at least 100 square feet.

(B) Each primary enclosure shall have an elevated platform(s) [~~platform~~] large enough to accommodate all animals in the enclosure simultaneously.

(C) Outdoor primary enclosures over 1,000 square feet (uncovered) shall have vertical jump walls at least 8 feet high with a 45 degree inward angle overhang at least 2 feet wide or jump walls at least 10 feet high without an overhang. The inward angle fencing shall be made of the same material as the vertical fencing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 6, 2006.

TRD-200603054
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL
SUBCHAPTER E. REGISTRATION REGULATIONS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes the repeal of §289.230, concerning certification of mammography systems and accreditation of mammography facilities and new §289.230, concerning certification of mammography systems and mammography machines used for interventional breast radiography.

BACKGROUND AND PURPOSE

Section 289.230 concerning certification of mammography systems and accreditation of mammography facilities is being repealed and divided into two new rules, one concerning certification and the other concerning accreditation. The repeal and new rules are the result of the agency applying to the United States Food and Drug Administration (FDA) to become a certifying body for mammography facilities. The FDA recommended that the current rules be separated into certification and accreditation rules for clarification, as all mammography facilities in the state must have certification with the agency, while accreditation may be with the agency or with the American College of Radiology. Certification requirements will be located in §289.230, "Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography." The accreditation requirements will be incorporated into new §289.234, "Mammography Accreditation," that is addressed in a separate preamble.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.230 has been reviewed and the department has determined that reasons for adopting the section continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The new section adds definitions for agency accreditation body, agency certifying body, practitioner of the healing arts, and provisional certificate to define terms used in this section. Definitions for certification, mean optical density, medical physicist, and targeted clinical image review are revised to be consistent with the FDA's Mammography Quality Standards Act (MQSA) rules. Requirements for certification that are consistent with FDA certification are added. Adding these requirements will allow the agency to become a certifying body for mammography facilities. Requirements for suspension or revocation of facility certification, denials of certification, and repeals are included. Requirements for machines used for interventional breast radiography are revised. There is clarification that facilities utilizing physicians and technologists from temporary agencies must meet qualification standards. Language on holding patients or image receptors during an exam and use of protective devices are added. Record-keeping requirements are revised to be consistent with those of the FDA.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to protect public health and safety by affording facilities the opportunity to become certified and accredited for mammography through one agency. Facilities will also have the option of becoming accredited through the American College of Radiology.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2239, or by email to cindy.cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web site (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or cindy.cardwell@dshs.state.tx.us, if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §289.230

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of

the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeal affects the Health and Safety Code, Chapter 401 and 1001; and Government Code, Chapter 531.

§289.230. Certification of Mammography Systems and Accreditation of Mammography Facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603126
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 458-7111 x6972

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25 TAC §289.230

STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new section affects the Health and Safety Code, Chapter 401 and 1001; and Government Code, Chapter 531.

§289.230. Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography.

(a) Purpose.

(1) This section provides for the certification of mammography systems and mammography machines used for interventional breast radiography. No person shall use radiation machines for mammography of humans or for interventional breast radiography except as authorized in a certification issued by the agency in accordance with the requirements of this section. Certification by this agency includes certification of mammography systems and facilities that have received accreditation by the agency accreditation body or by another United States Food and Drug Administration (FDA)-approved accreditation body and certification of mammography machines used for interventional breast radiography.

(2) The use of all mammography machines certified in accordance with this section shall be by or under the supervision of a physician licensed by the Texas Medical Board.

(b) Scope.

(1) In addition to the requirements of this section, all registrants are subject to the requirements of §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). Mammography facilities choosing to be accredited by the agency accreditation body will be subject to §289.234 of this title (relating to Mammography Accreditation).

(2) The procedures found in §289.205 of this title for modifications, suspensions, revocations, denials, and hearings regarding certificates of registration are applicable to certifications issued by the agency.

(3) This section does not apply to an entity under the jurisdiction of the federal government.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation--An approval of a mammography machine within a mammography facility by an accreditation body. A facility may be accredited by the agency accreditation body or another FDA-approved accreditation body.

(2) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(3) Action limit--The minimum or maximum value of a quality assurance measurement representing acceptable performance. Values less than the minimum or greater than the maximum action limit indicate that corrective action must be taken by the facility.

(4) Additional mammography review (includes targeted clinical image reviews)--At the request of the agency certification body or an FDA-approved accreditation body, a review by the FDA-approved accreditation body of clinical images and other relevant facility information necessary to assess conformation with the accreditation standards. The reviews include the following:

(A) clinical image review with interpretation; or

(B) clinical image review without interpretation.

(5) Adverse event--An undesirable experience associated with mammography activities within the scope of this section. Adverse events include but are not limited to:

(A) poor image quality;

(B) failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(C) use of personnel who do not meet the applicable requirements of subsection (r) of this section.

(6) Agency accreditation body--For the purpose of this section, the agency as approved by the FDA under Title 21, Code of Federal Regulations (CFR), Part 900.3(d) to accredit mammography facilities in the State of Texas.

(7) Agency certifying body--For the purpose of this section, the agency, as approved by FDA, under Title 21, CFR, Part 900.21, to certify facilities within the State of Texas to perform mammography services.

(8) Air kerma--The kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For x-rays with energies less than 300 kiloelectronvolts (keV), 1 Gy = 100 rad. In air, 1 Gy of absorbed dose is delivered by 114 roentgens (R) of exposure.

(9) Automatic exposure control (AEC)--A device that automatically controls one or more technique factors in order to obtain at preselected locations a required quantity of radiation.

(10) Average glandular dose--The average absorbed dose accruing to the glandular tissue of the breast.

(11) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(12) Breast implant--A prosthetic device implanted in the breast.

(13) Calendar quarter--Any one of the following time periods during a given year: January 1 - March 31, April 1 - June 30, July 1 - September 30, or October 1 - December 31.

(14) Calibration of instruments--The comparative response or reading of an instrument relative to a series of known radiation values over the range of the instrument.

(15) Category I continuing medical education units (CMEU)--Educational activities designated as Category I and approved by the Accreditation Council for Continuing Medical Education, the American Osteopathic Association, a state medical society, or an equivalent organization.

(16) Certification--An authorization for the use of a mammography system or mammography machines used for interventional breast radiography.

(17) Clinical image--See the definition for mammogram.

(18) Contact hour--An hour of training received through direct instruction.

(19) Continuing education unit (CEU)--One contact hour of training.

(20) Control panel--That part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for setting the technique factors.

(21) Direct instruction--Instruction that includes:

(A) face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

(B) the administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

(22) Direct supervision--Oversight of operations that include the following.

(A) During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's record.

(B) During performance of a mammography examination, the supervising medical radiologic technologist is present to observe and correct, as needed, the individual who is performing the examination.

(C) During performance of a survey of the registrant's equipment and quality assurance program, the supervising medical physicist is present to observe, and correct, as needed, the individual who is conducting the survey.

(23) Established operating level--The value of a particular quality assurance parameter that has been established as an acceptable normal level by the registrant's quality assurance program.

(24) Facility--A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including the following:

(A) the operation of equipment to produce a mammogram;

(B) processing of film;

(C) initial interpretation of the mammogram; or

(D) maintaining the viewing conditions for that interpretation.

(25) FDA-approved accreditation body--An entity approved by the FDA under Title 21, CFR, Part 900.3(d), to accredit mammography facilities.

(26) Final assessment categories--The overall final assessment of findings in a report of a mammography examination, classified in one of the following categories:

(A) "negative" indicates nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained);

(B) "benign" is also a negative assessment;

(C) "probably benign" indicates a finding(s) that has a high probability of being benign;

(D) "suspicious abnormality" indicates a finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant;

(E) "highly suggestive of malignancy" indicates a finding(s) that has a high probability of being malignant;

(F) "known biopsy proven malignancy" indicates appropriate action should be taken;

(G) "post procedure mammogram" indicates a mammogram to confirm the deployment and position of a breast tissue marker; or

(H) "incomplete" indicates there is a need for additional imaging evaluation and/or prior mammograms for comparison. Reasons why no assessment can be made shall be stated by the interpreting physician.

(27) First allowable time--The earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body.

(28) Formal training--Attendance and participation in direct instruction. This does not include self-study programs.

(29) Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any

that might be present initially in the beam concerned, is deemed to be excluded.

(30) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(31) Image receptor--Any device that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(32) Institutional review board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(33) Interpreting physician--A licensed physician who interprets mammographic images and who meets the requirements of subsection (r)(1) of this section.

(34) Interventional breast radiography--Imaging of a breast during invasive interventions for localization or biopsy procedures.

(35) Investigational device exemption--An exemption that allows the investigational device to be used in a clinical study in order to collect safety and effectiveness data required to support a Premarket Approval application or a 501(k) Premarket Notification submission to FDA.

(36) Kerma--The sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

(37) Laterality--The designation of either the right or left breast.

(38) Lead interpreting physician--The interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of subsections (u), (v), and (w) of this section.

(39) Mammogram--A radiographic image produced through mammography.

(40) Mammographic modality--A technology for radiography of the breast. Examples are screen-film mammography and full-field digital mammography.

(41) Mammography--The use of x-radiation to produce an image of the breast that may be used to detect the presence of pathological conditions of the breast. For the purposes of this section, mammography does not include radiography of the breast performed as follows:

(A) during invasive interventions for localization or biopsy procedures except as specified in subsection (bb) of this section; or

(B) with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations.

(42) Mammography machine(s)--A unit consisting of components assembled for the production of x-rays for use during mammography. These include, at a minimum, the following:

(A) an x-ray generator;

(B) an x-ray control;

(C) a tube housing assembly;

(D) a beam limiting device; and

(E) supporting structures.

(43) Mammography medical outcomes audit--A systematic collection of mammography results compared with outcomes data.

(44) Mammography system--A system that includes the following:

(A) an x-ray machine used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging-processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiologic technologist who performs mammography; and

(F) a physician who engages in mammography and who meets the requirements of this section relating to the reading, evaluation, and interpretation of mammograms.

(45) Mandatory training--Additional training required by the agency certifying body or FDA-approved accreditation body for interpreting physicians, medical radiologic technologists, or medical physicists as the result of a required corrective action.

(46) Mean optical density--The average of the optical densities measured using uniform, defect-free absorber thicknesses of 2, 4, and 6 centimeters (cm) with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

(47) Medical physicist--An individual who performs surveys and evaluations of mammographic equipment and facility quality assurance programs in accordance with this section and who meets the qualifications in subsection (r)(3) of this section.

(48) Medical radiologic technologist (operator of equipment)--An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations, who performs mammography examinations in accordance with this section and who meets the qualifications in subsection (r)(2) of this section.

(49) Mobile service operation--The provision of mammography machines and personnel at temporary sites for limited time periods.

(50) Multi-reading--Two or more physicians interpreting the same mammogram. At least one physician shall be qualified as an interpreting physician.

(51) Optical density (OD)--A measure of the fraction of incident light transmitted through a developed film and defined by the equation:

Figure: 25 TAC §289.230(c)(51)

(52) Patient--Any individual who undergoes a mammography examination in a facility, regardless of whether the person is referred by a physician or is self-referred.

(53) Phantom--A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(54) Phantom image--A radiographic image of a phantom.

(55) Physical science--This includes physics, chemistry, radiation science (including medical physics and health physics), and engineering.

(56) Positive mammogram--A mammogram that has an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

(57) Practitioner of the healing arts (practitioner)--For the purposes of this section, a person licensed to practice healing arts by the Texas Medical Board as a physician.

(58) Provisional certification--A provisional authorization described in subsection (g) of this section.

(59) Qualified instructor--An individual whose training and experience prepares him or her to carry out specified training assignments. Interpreting physicians, medical radiologic technologists, or medical physicists who meet the requirements of subsection (r) of this section would be considered qualified instructors in their respective areas of mammography. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the requirements of this section include, but are not limited to, instructors in a post-high school training institution and manufacturers' representatives.

(60) Quality control technologist--An individual meeting the requirements of subsection (r)(2) of this section who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

(61) Radiation machine--For the purposes of this part, radiation machine also means mammography machine.

(62) Self-referral mammography--The use of x-radiation to test asymptomatic women for the detection of diseases of the breasts when such tests are not specifically and individually ordered by a licensed physician.

(63) Serious adverse event--An adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(64) Serious complaint--A report of a serious adverse event.

(65) Source-to-image receptor distance (SID)--The distance from the source to the center of the input surface of the image receptor.

(66) Standard breast--A 4.2 cm thick compressed breast consisting of 50% glandular and 50% adipose tissue.

(67) Survey--An on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(68) Technique chart--A chart that provides all necessary generator control settings and geometry needed to make clinical radiographs.

(69) Traceable to a national standard--Calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every two years. The results of the proficiency test conducted within 24 months of calibration shall show agreement within plus or minus 3.0% of the national standard in the mammography energy range.

(d) Prohibitions.

(1) Radiographic equipment designed for general purpose or special nonmammography procedures shall not be used for mammography. This includes systems that have been modified or equipped with special attachments for mammography.

(2) The agency may prohibit use of mammography machines that pose a significant threat or endanger public health and safety, in accordance with §289.231 of this title and §289.205 of this title.

(3) Individuals shall not be exposed to the useful beam except for healing arts purposes and unless such exposure has been authorized by a licensed physician. This provision specifically prohibits intentional exposure for the following purposes:

(A) exposure of an individual for training, demonstration, or other non-healing arts purposes;

(B) exposure of an individual for the purpose of healing arts screening (self referral mammography) except as authorized by subsection (cc) of this section; and

(C) exposure of an individual for the purpose of research except as authorized by subsection (dd) of this section.

(e) Exemptions.

(1) Mammography machines or cabinet x-ray machines used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These machines are required to meet applicable provisions of §289.226 of this title and §289.228 of this title (relating to Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines).

(2) Mammography machines used exclusively for interventional breast radiography are exempt from the requirements of this section except for those listed in subsection (bb) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.

(3) Loaner machines as described in subsection (n)(5) of this section are exempt from the inspection requirements in subsection (gg) of this section. These machines are not required to be accredited by an FDA-approved accreditation body.

(4) Mammography machines with investigational device exemptions as described in subsection (dd) of this section and used in clinical studies are exempt from the requirements of this chapter. These machines are not required to be accredited by an FDA-approved accreditation body.

(5) All mammography registrants are exempt from the posting of radiation area requirements of §289.231(x) of this title provided that the operator has continuous surveillance and access control of the radiation area.

(f) Requirements for mammography systems certification.

(1) To obtain a certification, facilities shall meet the quality standards in subsections (r) - (aa) of this section and be accredited by an FDA-approved accreditation body. In order to qualify for certification, new facilities must apply to the agency certifying body in accordance with the following requirements and to an FDA-approved accreditation body and receive acceptance of the accreditation application. If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in this subsection and §289.234(d) of this title.

(2) Each person having a mammography machine shall submit an application in accordance with §289.226(e)(1) - (3) and (5) - (7) and (f)(4) - (5) of this title, and receive certification from the

agency certifying body before beginning use of the mammography machine on humans.

(3) An application for certification shall be signed by a licensed physician. The signature of the applicant and the radiation safety officer (RSO) shall also be required.

(4) An application for certification may contain information on multiple mammography machines. Each mammography machine must be identified by referring to the machine's manufacturer, model number, and serial number of the control panel. If this is not a new certification, the registrant shall maintain and provide proof of current accreditation. If accreditation expires before the expiration of the certification, the registrant shall submit proof of renewed status to the agency.

(5) Each applicant shall submit documentation of the following:

(A) personnel qualifications, including dates of licensure or certification, in accordance with subsection (r) of this section;

(B) manufacturer, model, and serial number of each mammography machine control panel;

(C) evidence that a medical physicist:

(i) has determined that each machine meets the equipment standards in subsection (s) of this section;

(ii) has performed a survey and a mammography equipment evaluation in accordance with subsection (v)(10) and (11) of this section; and

(iii) has determined that the average glandular dose for one craniocaudal-caudal view for each machine does not exceed the value in subsection (v)(5)(F) of this section;

(D) self-referral program information in accordance with subsection (cc) of this section, if the facility offers self-referral mammography; and

(E) items required for authorization of a mobile service operation in accordance with §289.226(g) of this title, if the facility provides a mobile service.

(g) Issuance of certification and provisional certification.

(1) Certification. A certification will be issued if the agency certifying body determines that an application meets the requirements of the Act and the requirements of this chapter. The certification authorizes the proposed activity in such form and contains such conditions and limitations as the agency certifying body deems appropriate or necessary. The certification may include one or both of the following:

(A) mammography systems and facilities certification, following approval of accreditation by an FDA-approved accreditation body; or

(B) certification of mammography machines used for interventional breast radiography.

(2) Requirements and conditions. The agency certifying body may incorporate in the certification at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's possession, use, and transfer of radiation machines subject to this chapter as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of radiation machines subject to this section.

(3) Additional information. The agency certifying body may request, and the registrant shall provide, additional information after the certification has been issued to enable the agency certifying body to determine whether the certification should be modified in accordance with §289.226(r) of this title.

(4) Provisional certification application. A new facility is eligible to apply for a provisional certification. The provisional certification will enable the facility to perform mammography and to obtain the clinical images needed to complete the accreditation process. To apply for and receive a provisional certification, a facility must meet the requirements of this chapter and submit the necessary information to an FDA-approved accreditation body. If the facility chooses to be accredited by the agency accreditation body, the facility shall submit the information required in subsection (f) of this section and §289.234(d) of this title to the agency accreditation body.

(5) Issuing provisional certifications. Following the agency certifying body's receipt of the accreditation body's decision that a facility has submitted the required information, the agency certifying body may issue a provisional certification to a facility upon determination that the facility has satisfied the requirements of the Act and this chapter. A provisional certification shall be effective for up to six months from the date of issuance. A provisional certification cannot be renewed, but a facility may apply for a 90-day extension of the provisional certification.

(6) Extension of provisional certification. Extension of provisional certifications shall be in accordance with the following.

(A) To apply for a 90-day extension to a provisional certification, a facility shall submit to the FDA-approved accreditation body who issued the original certificate, a statement of what the facility is doing to obtain certification and evidence that there would be a significant adverse impact on access to mammography in the geographic area served if such facility did not obtain an extension.

(B) The agency certifying body may issue a 90-day extension for a provisional certification upon determination that the extension meets the criteria in paragraph (4) of this subsection.

(C) There can be no renewal of a provisional certification beyond the 90-day extension.

(7) Reinstatement policy. A previously certified facility that has allowed its certification to expire, that has been refused a renewal of its certification by the agency certifying body, or that has had its certification suspended or revoked by the agency certifying body, may reapply to have the certification reinstated so that the facility may be considered to be a new facility and thereby be eligible for a provisional certification.

(A) Unless prohibited from reinstatement under subsection (h)(5) of this section, a facility applying for reinstatement shall:

(i) contact an FDA-approved accreditation body for reapplication for accreditation;

(ii) fully document its history as a previously provisionally certified or certified mammography facility, including the following information:

(I) name and address of the facility under which it was previously provisionally certified or certified;

(II) name of previous owner/lessor;

(III) facility identification number assigned to the facility under its previous certification by the FDA or the agency certifying body; and

(IV) expiration date of the most recent FDA or agency provisional certification; and

(iii) justify application for reinstatement of accreditation by submitting to an FDA-approved accreditation body a corrective action plan that details how the facility has corrected deficiencies that contributed to the lapse of, denial of renewal, or revocation of its certification.

(B) The agency certifying body may issue a provisional certification to the facility if the agency determines that the facility:

(i) has adequately corrected, or is in the process of correcting, pertinent deficiencies; and

(ii) has taken sufficient corrective action since the lapse of, denial of renewal, or revocation of its previous certification.

(C) After receiving the provisional certification, the facility may lawfully perform mammography while completing the requirements for accreditation and certification.

(h) Suspension or revocation of certification.

(1) Except as provided in paragraph (2) of this subsection, the agency certifying body may suspend or revoke a certification issued by the agency certification body if it finds, after providing the owner or operator of the facility with notice and opportunity for a hearing in accordance with §289.205 of this title, that the owner, operator, or any employee of the facility:

(A) has been guilty of misrepresentation in obtaining the certification;

(B) has failed to comply with the requirements of this chapter;

(C) has failed to comply with requests of the agency certifying body or an FDA-approved accreditation body for records, information, reports, or materials that are necessary to determine the continued eligibility of the facility for a certification or continued compliance with the requirements of this chapter;

(D) has refused a request of a duly designated FDA inspector, state inspector, or an FDA-approved accreditation body representative for permission to inspect the facility or the operations and pertinent records of the facility;

(E) has violated or aided and abetted in the violation of any provision of or regulation promulgated pursuant to the requirements of the Act and the requirements of this chapter; or

(F) has failed to comply with prior sanctions imposed by the agency certifying body under §289.205 of this title.

(2) The agency certifying body may suspend a certification of a facility before holding a hearing if it makes a finding described in paragraph (1) of this subsection and also determines that:

(A) the failure to comply with requirements presents a serious risk to human health;

(B) the refusal to permit inspection makes immediate suspension necessary; or

(C) there is reason to believe that the violation or aiding and abetting of the violation was intentional or associated with fraud.

(3) If the agency certifying body suspends a certification in accordance with paragraph (2) of this subsection:

(A) the agency certifying body shall provide the facility with an opportunity for a hearing under §289.205 not later than 60 days from the effective date of this suspension; and

(B) the suspension shall remain in effect until the agency certifying body determines that:

(i) allegations of violations or misconduct were not substantiated;

(ii) violations of requirements have been corrected to the agency certifying body's satisfaction; or

(iii) the certification is revoked in accordance with paragraph (4) of this subsection.

(4) After providing a hearing in accordance with paragraph (3)(A) of this subsection, the agency certifying body may revoke the certification if the agency determines that the facility:

(A) is unwilling or unable to correct violations that were the basis for suspension; or

(B) has engaged in fraudulent activity to obtain or continue certification.

(5) If a facility's certification was revoked on the basis of an act described in §289.205 of this title, no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility within two years of the date of revocation.

(i) Appeal of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(1) The appeal process described in this subsection is available only for adverse accreditation or reaccreditation decisions that preclude certification by the agency certifying body. Agency certifying body decisions to suspend or revoke certificates that are already in effect will be handled in accordance with subsection (h) of this section.

(2) Upon learning that a facility has failed to become accredited or reaccredited, the agency certifying body will notify the facility that the agency certifying body is unable to certify that facility without proof of accreditation.

(3) A facility that has been denied accreditation or reaccreditation and cannot achieve satisfactory resolution of an adverse accreditation decision through the FDA-approved accreditation body's appeal process is entitled to further appeal to the FDA.

(4) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

(j) Denial of certification.

(1) The agency certifying body may deny the application if the agency certifying body has reason to believe that:

(A) the facility will not be operated in accordance with the provisions of subsections (r) - (aa) of this section;

(B) the facility will not permit inspections or provide access to records or information in a timely fashion;

(C) any material false statement in the application or any statement of fact required under provision of the Act was made;

(D) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency certification body to refuse to grant a certification of mammography facility on an original application; or

(E) the facility failed to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(2) Before the agency certification body denies an application for certification, the agency shall give notice of the denial, the facts warranting the denial, and shall afford the applicant an opportunity for a hearing in accordance with §289.205(h) of this title. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of date of receipt of the notice, the agency may proceed to deny. The applicant shall have the burden of proof showing cause why the application should not be denied.

(3) If the agency certifying body denies an application for certification by a facility that has received accreditation from an FDA-approved accreditation body, the agency certifying body shall provide the facility with a written statement of the grounds on which the denial is based.

(k) Appeals of denial of certification.

(1) The appeals procedures described in this subsection are available only to facilities that are denied certification by the agency certifying body after they have been accredited by an FDA-approved accreditation body. Appeals for facilities that have failed to become accredited with the agency accreditation body shall be in accordance with §289.234(h) of this title.

(2) A facility that has been denied certification may request reconsideration and appeal of the agency certifying body's determination in accordance with the applicable provisions of §289.205 of this title.

(l) Modification of certification. Modification of certification shall be in accordance with §289.226(r) of this title.

(m) Specific terms and conditions of certification. Specific terms and conditions of certification shall be in accordance with §289.226(l) of this title.

(n) Responsibilities of registrant.

(1) In addition to the requirements of §289.226(m)(3) - (7) of this title, a registrant shall notify the agency certifying body in writing prior to any changes that would render the information contained in the application or the certification inaccurate. These include but are not limited to the following:

(A) name and mailing address;

(B) street address where machine(s) will be used; and

(C) mammography machines.

(2) Prior to employing the individuals listed in subparagraphs (A) - (E) of this paragraph, the registrant is required to verify and maintain copies of their qualifications. Documentation of qualifications of individuals listed in subparagraphs (A) - (E) of this paragraph and notification of a change in any of the following is required within 30 days of such change:

(A) radiation safety officer;

(B) lead interpreting physician;

(C) interpreting physicians;

(D) medical radiologic technologists; or

(E) medical physicist.

(3) Registrants utilizing interpreting physicians or technologists from a temporary service shall verify and maintain copies of the qualifications of these individuals for inspection by the agency. The registrant does not need to notify the agency certifying body unless these personnel will be at the facility for a period exceeding four weeks.

(4) All mammography facilities installing new or replacement mammography machines shall have either current accreditation or have submitted an application to an FDA-approved accreditation body for review unless exempted by subsection (e)(1) - (3) of this section. A mammography machine shall not be used to perform mammograms if an application for accreditation for that machine has been denied, or if the accreditation has been suspended or expired.

(5) A facility with an existing certification may begin using a new or replacement machine before receiving an updated certification if the registrant submits to the agency certifying body and to the FDA-approved accreditation body, documentation with a medical physicist's report in accordance with subsection (v)(10) and (11) of this section, verifying compliance of the new machine with this section. The medical physicist's report is required prior to using the machine on patients.

(6) Loaner mammography machines may be used on patients for 60 days without adding the mammography machine to the certification. A medical physicist's report verifying compliance of the loaner mammography machine with this section shall be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use. If the use period will exceed 60 days, the facility shall add the mammography machine to its certification and a fee will be assessed.

(7) Records of training and experience and all other records required by this section shall be maintained for review in accordance with subsection (ff) of this section.

(o) Renewal of certification.

(1) A certification for a mammography system is valid for three years from the date of issuance unless the certification of the facility is suspended or revoked prior to such deadlines.

(2) A mammography facility filing an application for renewal in accordance with subsection (f) of this section and fees in accordance with §289.204 of this title before the existing certification expires:

(A) may continue to perform mammography until the expiration date of the certification; or

(B) if the facility receives written authorization from an FDA-approved accreditation body, may continue to perform mammography until the review process is complete and the accreditation status has been determined by the FDA-approved accreditation body.

(3) A facility with mammography machines used for interventional breast radiography shall file an application for renewal in accordance with subsection (bb)(9) of this section and pay the fee required by §289.204 of this title.

(p) Expiration of certification.

(1) Except as provided by subsection (o) of this section, each certification expires at the end of the day in the month and year stated on the certificate of registration. Expiration of the certification does not relieve the registrant of the requirements of this chapter.

(2) If a registrant does not submit an application for renewal of the certification under subsection (o) of this section, as applicable, the registrant shall on or before the expiration date specified in the certification:

(A) terminate use of all mammography machines;

(B) notify the agency certifying body in writing of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4) of this section will be met;

(C) pay any outstanding fees in accordance with §289.204 of this title; and

(D) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.

(q) Termination of certification. When a registrant decides to terminate all activities involving mammography machines authorized under the certification, the registrant shall:

(1) notify the agency certifying body and the FDA-approved accreditation body immediately;

(2) request termination of the certification in writing;

(3) pay any outstanding fees in accordance with §289.204 of this title;

(4) notify the agency certifying body, in writing, of the film storage location of mammography patients' films and address how the requirements of subsection (t)(4) of this section will be met; and

(5) submit a record of the disposition of the mammography machine(s) to the agency certifying body. If the machine(s) was transferred, include to whom it was transferred.

(r) Personnel qualifications. The following requirements apply to all personnel involved in any aspect of mammography, including the production and interpretation of mammograms.

(1) Interpreting physician. Each physician interpreting mammograms shall hold a current Texas license issued by the Texas Medical Board and meet the following qualifications.

(A) Initial qualifications. Before interpreting mammograms independently, the physician shall:

(i) be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or one of the other bodies approved by the FDA to certify interpreting physicians or have at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography in accordance with subsection (hh)(2) of this section;

(ii) have had a minimum of 60 hours of documented category I CMEUs in mammography. At least 15 of the 60 hours shall have been acquired within three years immediately prior to the date that the physician qualified as an interpreting physician. Hours spent in residency specifically devoted to mammography will be equivalent to category I CMEUs and accepted if documented in writing by the appropriate representative of the training institution; and

(iii) have interpreted or multi-read, under the direct supervision of an interpreting physician, at least 240 mammographic examinations within the six-month period immediately prior to the date that the physician qualifies as an interpreting physician.

(B) Exemptions.

(i) Physicians who qualified as interpreting physicians in accordance with the requirements of §289.230 that were in effect prior to April 28, 1999, or any other equivalent state or federal requirements in effect prior to April 28, 1999, are considered to have met the initial requirements of subparagraph (A) of this paragraph.

(ii) Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any six month period during the last two years of a diagnostic radiology residency and who became board certified at the first allowable time, are exempt from subparagraph (A)(iii) of this paragraph.

(C) Continuing education and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. These periods begin when a physician completes the requirements to become an interpreting physician in subparagraph (A) of this paragraph. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each interpreting physician shall maintain qualifications by meeting the following requirements:

(i) participating in education programs by completing at least 15 category I CMEUs in mammography that shall include at least six CMEUs in each modality used by the interpreting physician in his/her practice or by teaching mammography courses. CMEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

(I) the date of the registrant's annual inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two;

(ii) interpreting or multi-reading at least 960 mammographic examinations that must be completed during the 24 months immediately preceding:

(I) the date of the registrant's annual inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two; and

(iii) accumulating at least eight hours of CMEUs in any mammography modality in which the interpreting physician has not been previously trained, prior to independently using the new modality.

(D) Re-establishing qualifications. Before resuming independent interpretation of mammograms, interpreting physicians who fail to maintain the required continuing education or experience requirements shall re-establish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtain a sufficient number of additional category I CMEUs to bring their total up to the 15 category I CMEU credits required in the previous 36 months; and

(ii) within the six months immediately prior to resuming independent interpretation and under the direct supervision of an interpreting physician, interpret or multi-read one of the following, whichever is less:

(I) at least 240 mammographic examinations; or

(II) a sufficient number of mammographic examinations to bring the total up to 960 examinations for the prior 24 months.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently interpreting mammograms. Records of any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(2) Medical radiologic technologists (operators of equipment). Each person performing mammographic examinations shall have current certification as a medical radiologic technologist under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and shall meet the following qualifications.

(A) Initial requirements. Before performing mammographic examinations, the operator of equipment shall have:

(i) completed a minimum of 40 contact hours of training as outlined in subsection (hh)(1) of this section by a qualified instructor; and

(ii) performed a minimum of 25 mammographic examinations under the direct supervision of an individual qualified in accordance with the requirements of this paragraph. The 25 mammographic examinations may be obtained concurrently with the 40 contact hours of training specified in clause (i) of this subparagraph but shall not exceed 16 hours of the 40 contact hours.

(B) Exemptions. Equipment operators who qualified as medical radiologic technologists to perform mammography in accordance with the requirements of §289.230 that were in effect prior to April 28, 1999, and any other federal requirements in effect prior to April 28, 1999, are considered to have met the initial requirements of subparagraph (A) of this paragraph.

(C) Continuing education and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education begins when a technologist completes the requirements in subparagraph (A) of this paragraph. The period for continuing experience begins when a technologist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical radiologic technologist shall maintain qualifications by meeting the following requirements:

(i) participating in education programs by completing at least 15 CEUs in mammography that shall include at least six CEUs in each modality used by the technologist or by teaching mammography courses. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

(I) the date of the registrant's annual inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two;

(ii) performing a minimum of 200 mammographic examinations that must be completed during the 24 months immediately preceding:

(I) the facility's annual inspection;

(II) the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two; and

(iii) accumulating at least eight hours of CEUs in any mammography modality in which the medical radiologic technologist has not been previously trained, prior to independently using the new modality.

(D) Requalification. Before resuming independent performance of mammograms, medical radiologic technologists who fail to maintain the continuing education or experience requirements shall re-establish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtaining a sufficient number of additional CEUs to bring their total up to the 15 CEU credits required in the previous 36 months, at least six of which shall be related to each modality used by the technologist in mammography; and/or

(ii) performing a minimum of 25 mammographic examinations under the direct supervision of a qualified medical radiologic technologist.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently performing mammograms. Records of any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(3) Medical physicist. Each medical physicist performing mammographic surveys, evaluating mammographic equipment, or providing oversight of the facility quality assurance program in accordance with subsection (u) of this section, shall hold a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in diagnostic radiological physics and be registered with the agency or employed by an entity registered with the agency, in accordance with §289.226(j) of this title and the Act, unless exempted by §289.226(d)(6) of this title. Each medical physicist shall meet the following qualifications.

(A) Initial qualifications. Before performing surveys and evaluating mammographic equipment independently, the medical physicist shall:

(i) have a masters degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or equivalent (30 quarter hours) of college undergraduate or graduate level physics;

(ii) have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) have experience conducting surveys of at least one mammography facility and a total of at least ten mammography machines. After April 28, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets the requirements of subparagraphs (A) and (C) of this paragraph. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement.

(B) Alternative initial qualifications. Individuals who qualified as a medical physicist in accordance with the requirements of this section that were in effect prior to April 28, 1999, or any other equivalent state or federal requirements in effect prior to April 28, 1999, and have met the following additional qualifications prior to April 28, 1999, are determined to have met the initial qualifications of subparagraph (A) of this paragraph:

(i) a bachelor's degree or higher in a physical science from an accredited institution with no less than ten semester hours or equivalent of college undergraduate or graduate level physics;

(ii) 40 contact hours of documented specialized training in conducting surveys of mammography facilities; and

(iii) experience conducting surveys of at least one mammography facility and a total of at least 20 mammography ma-

chines. No more than one survey of a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement. The training and experience requirements must be met after fulfilling the degree requirements.

(C) Continuing education and experience. The time period for completing continuing education is a 36-month period and the time period for completing continuing experience is a 24-month period. The period for continuing education will begin when a physicist completes the requirements in subparagraph (A) of this paragraph. The time period for continuing experience will begin when a physicist completes the requirements in subparagraph (A) of this paragraph, or April 28, 1999, whichever is later. The facility shall choose one of the dates in clause (i) of this subparagraph to determine the 36-month continuing education period and one of the dates in clause (ii) of this subparagraph to determine the 24-month continuing experience period. Each medical physicist shall maintain his/her qualifications by meeting the following requirements:

(i) participating in education programs, either by teaching or completing at least 15 CEUs in mammography that shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during his or her surveys. CEUs earned through teaching a specific course can be counted only once during the 36-month period. The continuing education must be completed in the 36 months immediately preceding:

(I) the date of the registrant's annual inspection;

(II) by the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two;

(ii) performing surveys of two mammography facilities and a total of at least six mammography machines (no more than one survey of a specific facility within a ten-month period or a specific machine within a period of 60 days can be counted towards the total mammography machine survey requirement). The continuing experience must be completed during the 24 months immediately preceding:

(I) the date of the facility's annual inspection;

(II) by the last day of the calendar quarter preceding the inspection; or

(III) any date in between the two; and

(iii) accumulating at least eight hours of CEUs in any mammography modality in which the medical physicist has not been previously trained, prior to independently using the new modality.

(D) Re-establishing qualifications. Before resuming independent performance of surveys and equipment evaluations, medical physicists who fail to maintain the continuing education or experience requirements shall reestablish their qualifications by completing one or both of the following requirements, as applicable:

(i) obtaining a sufficient number of additional CEUs to bring their total up to the 15 CEU credits required in the previous 36 months; and

(ii) performing a sufficient number of surveys, under the direct supervision of a qualified medical physicist, to bring their total up to two mammography facilities and a total of at least six mammography machines for the prior 24 months. No more than one survey of a specific machine within a period of 60 days shall be counted towards the total mammography machine survey requirement.

(E) Any mandatory training required by the agency certifying body or an FDA-approved accreditation body shall be completed prior to independently performing mammographic surveys, evaluating mammographic equipment, or providing oversight of a facility's quality assurance program. Records of any mandatory training shall be maintained in accordance with subsection (ff)(3) of this section.

(4) Retention of personnel records. Records documenting the qualifications, continuing education, and experience of personnel in subsection (r)(1) - (3) of this section shall be maintained for inspection by the agency in accordance with subsection (ff) of this section.

(s) Equipment standards. Only systems meeting the following standards shall be used.

(1) System design. The equipment shall have been specifically designed and manufactured for mammography and in accordance with Title 21, CFR, §§1010.2, 1020.30, and 1020.31.

(2) Motion of tube-image receptor assembly. The assembly shall be capable of being fixed in any position where it is designed to operate. Once fixed in any such position, it shall not undergo unintended motion. In the event of power interruption, this mechanism shall not fail.

(3) Image receptors. Systems using screen-film image receptors shall, at a minimum, provide for the following:

(A) operation with image receptors of 18 x 24 cm and 24 x 30 cm;

(B) operable moving grids matched to all image receptor sizes provided;

(C) operation with the grid removed from between the source and image receptor for systems used for magnification procedures; and

(D) image receptors to rest, post-loading, 15 minutes between exposures.

(4) Magnification. Systems used to perform noninterventional problem solving procedures shall have radiographic magnification capability available for use with, at a minimum, at least one magnification value within the range of 1.4 to 2.0.

(5) Focal spot and target material selection. Selection of the focal spot or target material shall be as follows.

(A) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(B) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(C) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material and/or focal spot actually used during the exposure.

(6) Compression. All mammography systems shall incorporate a compression device.

(A) Application of compression. Effective October 28, 2002, and thereafter, each system shall provide the following features operable from both sides of the patient:

(i) an initial power-driven compression activated by hands-free controls; and

(ii) fine adjustment compression controls.

(B) Compression paddle.

(i) Systems shall be equipped with different sized compression paddles that match the sizes of all full-field image receptors provided for the system.

(ii) Compression paddles for special purposes, including those smaller than the full size of the image receptor (for example, spot compression) may be provided. Such paddles are not subject to the requirements of clauses (v) and (vi) of this subparagraph.

(iii) Except as provided in clause (iv) of this subparagraph, the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(iv) Equipment intended by the manufacturer's design to not be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(v) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor.

(vi) The chest wall edge may be bent upward to allow for patient comfort, but shall not appear on the image.

(7) Technique factor selection and display. Technique factor selection and display shall be as follows.

(A) Manual selection of milliampere seconds (mAs) or at least one of its component parts, milliampere (mA) and/or time, shall be available.

(B) The technique factors (peak tube potential in kilovolts (kV) and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs) to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure control (AEC) is used, in which case the technique factors that are set prior to the exposure shall be indicated.

(C) When the AEC mode is used, the system shall indicate the actual kVp and mAs used during the exposure. The mAs may be displayed as mA and time.

(8) Automatic exposure control. Each screen-film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, for example, contact, magnification, and various image receptor sizes.

(A) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.

(i) The size and available positions of the detector shall be clearly indicated at the x-ray input surface of the breast compression paddle.

(ii) The selected position of the detector shall be clearly indicated.

(B) The system shall provide means to vary the selected optical density from the normal (zero) setting.

(9) X-ray film. The registrant shall use x-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(10) Intensifying screens. The registrant shall use intensifying screens for mammography that have been designated by the screen manufacturer as appropriate for mammography and shall use film that is matched to the screen's spectral output as specified by the manufacturer.

(11) Film processing solutions. For processing mammography films, the registrant shall use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(12) Lighting. The registrant shall make available special lights for film illumination (hot lights) capable of producing light levels greater than that provided by the view box.

(13) Film masking devices. Registrants shall ensure that film masking devices that can limit the illuminated area to a region equal to or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.

(14) Equipment variances. Registrants with mammography equipment that has been issued variances by FDA to Title 21, CFR, §§1020.2, 1020.30, 1020.31, or has had an alternative for a quality standard for equipment approved by the FDA under the provisions of Title 21, CFR, §900.18, shall maintain copies of those variances or alternative standards.

(15) Light fields. For any mammography system with a light beam that passes through the x-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 cm or the maximum source-image receptor distance (SID), whichever is less.

(t) Medical records and mammography reports.

(1) Contents and terminology. Each registrant shall prepare a written report of the results of each mammography examination that shall include the following information:

(A) name of the patient and an additional patient identifier;

(B) date of the examination;

(C) name and signature of the interpreting physician who interpreted the mammogram (electronic signatures are acceptable);

(D) overall final assessment of findings using the final assessment categories as defined in subsection (c) of this section; and

(E) recommendations made to the physician about what additional actions, if any, should be taken. All clinical questions raised by the referring physician shall be addressed in the report to the extent possible, even if the assessment is negative or benign.

(2) Communication of mammography results to the patient and health care providers or physicians, as applicable. Each registrant shall send reports as soon as possible, but no later than 30 days from the date of the mammography examination, to:

(A) patients advising them of the results of the mammography examination and any further medical needs indicated. The report shall include a summary written in language easily understood by a lay person; and

(B) referring physicians, or in the case of self-referral, to the physician indicated by the patient, advising them of the results of the mammography examination, containing the information specified in paragraph (1) of this subsection, and any further medical needs indicated.

(3) Follow-up with patients and physicians. Each registrant shall follow-up to confirm the following:

(A) that patients with positive findings and patients needing repeat exams have received proper notification; and

(B) that physicians have received proper notification of patients with positive findings or needing repeat exams.

(4) Retention of clinical images.

(A) Each registrant that performs mammograms shall maintain mammography films and reports in a permanent medical record for a minimum of five years. If no additional mammograms of the patient are performed at the facility, the films and reports shall be maintained for a minimum of ten years.

(B) Each registrant that performs mammograms shall, within 30 days of request by or on behalf of the patient, permanently or temporarily transfer the original mammograms and copies of the patient's reports to a medical institution, a physician, or to the patient directly.

(C) If the medical records are permanently forwarded, the receiving institution or physician shall maintain and become responsible for the original film until the fifth or tenth anniversary, as specified in subparagraph (A) of this paragraph.

(5) Mammographic image identification. Each mammographic image shall have the following information indicated on it in a permanent, legible manner and placed so as not to obscure anatomic structures:

(A) name of patient and an additional patient identifier;

(B) date of examination;

(C) view and laterality (this information shall be placed on the image in a position near the axilla);

(D) facility name and location (at a minimum the location shall include city, state, and zip code);

(E) technologist identification;

(F) cassette/screen identification; and

(G) mammography machine identification if there is more than one machine in the facility.

(6) Information shall also be maintained for each clinical image by utilizing a label on each film, recording on the film jacket, or maintaining a log or other means. The information shall include, but is not limited to, compressed breast thickness or degree of compression, and kVp.

(u) Quality assurance - general. Each registrant shall establish and maintain a written quality assurance program to ensure the safety, reliability, clarity, and accuracy of mammography services performed at the mammography facility, including corrective actions to be taken if images are of poor quality.

(1) Responsible individuals. Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.

(A) Lead interpreting physician. The registrant shall identify a lead interpreting physician who shall have the general responsibility of:

(i) ensuring that the quality assurance program meets all requirements of this subsection and subsections (v) and (w) of this section;

(ii) reviewing and documenting the technologists' quality control test results at least every three months or more frequently if consistency has not yet been achieved;

(iii) reviewing the physicists' results within 60 days of the receipt of the results or more frequently when needed; and

(iv) assigning and determining the individual's qualifications to perform the quality assurance tasks in subparagraphs (B) - (D) of this paragraph.

(B) Interpreting physicians. All interpreting physicians interpreting mammograms for the registrant shall:

(i) follow the registrant's procedures for corrective action when the images they are asked to interpret are of poor quality. These procedures shall be included in the facility's operating and safety procedures; and

(ii) participate in the medical outcomes audit program.

(C) Medical physicist. Each registrant shall use the services of a licensed medical physicist to survey mammography equipment and oversee the equipment-related quality assurance practices of the facility. At a minimum, the medical physicist shall be responsible for performing the surveys and the mammography equipment evaluations and providing the facility with the reports described in subsection (v)(10) and (11) of this section.

(D) Quality control technologist. The quality control technologist, designated by the lead interpreting physician, shall ensure performance of the items designated in subsection (v)(1) - (4), (7) - (9), (12), and (14) of this section. If other personnel are assigned the quality assurance tasks in accordance with subparagraph (A)(iv) of this paragraph, the quality control technologist shall insure that the requirements of subsection (v)(1) - (4), (7) - (9), (12), and (14) of this section are met.

(2) Quality assurance records. The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning mammography technique and procedures, quality control (include monitoring data, corrective actions, and the effectiveness of the corrective actions), safety, protection, and employee qualifications to meet assigned quality assurance tasks are properly maintained and updated. These quality control records shall be kept for each test specified in subsections (v) and (w) of this section, in accordance with subsection (ff) of this section.

(v) Quality assurance - equipment. Registrants with screen-film systems shall perform the following quality control tests at the intervals specified. In addition to the intervals specified in paragraphs (4)(B) and (5)(H) of this subsection, the tests shall be performed prior to initial use.

(1) Daily quality control tests. Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be completed and the results charted on each day that clinical films are processed before any clinical films are processed that day.

(A) Processor performance test. Using mammography film used clinically at the facility, sensitometer tests shall include assessment of the following:

(i) base plus fog density that shall be within plus 0.03 of the established operating level;

(ii) mid-density that shall be within plus or minus 0.15 of the established operating level; and

(iii) density difference that shall be within plus or minus 0.15 of the established operating level.

(B) Film processors being used for mammography at multiple locations, such as a mobile service operation, shall be subject to the requirements of this paragraph.

(C) Film processors utilized for mammography shall be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent.

(D) Each registrant shall utilize the same film processor for clinical and phantom images. Clinical images shall be processed within an interval not to exceed 24 hours from the time the first clinical image is taken. Facilities utilizing batch processing shall do the following:

(i) use a container to transport clinical images that will protect the film from exposure to light and radiation; and

(ii) maintain a log to include each patient name and unique identification number, date, and time of the first exam of each batch, and date and time of batch development.

(2) Weekly quality control tests. These tests shall be performed at an interval no greater than seven days. If mammography is not being performed on the date the test is due and more than seven days have past since the last test, the tests shall be performed prior to resuming mammography. An image quality evaluation test, using an FDA-accepted phantom, shall meet the following parameters.

(A) The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition and shall not change by more than plus or minus 0.20 from the established operating level.

(B) The density difference between the background of the phantom and an added test object, used to assess image contrast, shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.

(C) The phantom image shall be made on the standard mammographic film in use at the facility with techniques used for clinical images of a standard breast. The phantom image shall meet the requirements in subparagraphs (A) and (B) of this paragraph and clause (i) of this subparagraph. No mammograms shall be taken on patients if any of these minimums are not met.

(i) The mammographic machine shall be capable of producing images of the mammographic phantom in accordance with the phantom image scoring protocol in subsection (hh)(4) of this section or paragraph (7) of this subsection.

(ii) Each phantom image and a record of the evaluation of that image shall be maintained at the location where the mammography image was produced or with the radiographic equipment for mobile service operations.

(3) Quarterly quality control tests. These tests shall be performed within the calendar quarter at an interval not to exceed 90 days.

(A) Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square cm.

(B) Repeat analysis. A repeat analysis on clinical images repeated or rejected shall be performed, analyzed, and documented. The total repeat or reject rate shall not exceed 5.0%. If the total repeat or reject rate changes from the previously determined rate by more than 2.0% of the total films included in the analysis, the reason(s) for the change shall be determined. Corrective action shall be taken and documented if the total repeat or reject rate for the facility exceeds 5.0% or changes from the previously determined rate by more than 2.0% of the total films included in the analysis. Test films, cleared films, or film processed as a result of exposure of a film bin are not to be included in the count for repeat analysis. Films included in the repeat analysis are not required to be kept after completion of the analysis.

(4) Semiannual quality control tests. These tests shall be performed at an interval not to exceed six months.

(A) Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for two minutes while such film is placed on the counter top, emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.

(B) Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. The entire area of the cassette that may be clinically exposed shall be tested. This shall include all cassettes used for mammography in the facility.

(C) Compression device performance. The maximum compression force for the initial power drive shall be between 25 pounds and 45 pounds. The system shall be capable of compressing the breast with a force of at least 25 pounds and shall be capable of maintaining this compression for at least 15 seconds.

(5) Annual quality control tests. These tests shall be performed at an interval not to exceed 14 months.

(A) Automatic exposure control performance. The AEC shall be capable of maintaining film optical density within plus or minus 0.15 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 cm and the kVp is varied appropriately for such thicknesses over the kVp range and in the AEC mode used clinically in the facility.

(B) Kilovoltage peak accuracy and reproducibility. At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02. The kVp shall be accurate to within plus or minus 5.0% of the indicated or selected kVp at the following:

(i) the lowest clinical kVp that can be measured by a kVp test device;

(ii) the most commonly used clinical kVp; and

(iii) the highest available clinical kVp.

(C) Focal spot condition. Facilities shall evaluate focal spot condition by determining the system resolution as follows.

(i) Each system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 cycles/millimeter (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(ii) The bar pattern shall be placed 4.5 cm above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 cm of the chest wall edge of the image receptor.

(iii) When more than one target material is provided, the measurement in clause (i) of this subparagraph shall be made using the appropriate focal spot for each target material.

(iv) When more than one SID is provided, the test shall be performed at the SID most commonly used clinically.

(v) Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.

(D) Beam quality and half-value layer (HVL). The HVL shall meet the specifications of Title 21, CFR, §1020.30(m)(l) for the minimum HVL. These values, extrapolated to the mammographic range, are shown as follows. This test is performed using the clinical kVp on the standard breast. Values not shown in Table I may be determined by linear interpolation or extrapolation.
Figure: 25 TAC §289.230(v)(5)(D)

(E) Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

(F) Dosimetry. The average glandular dose delivered during a single craniocaudal view of an FDA accepted phantom simulating a standard breast shall not exceed 3.0 milligray (mGy) (0.3 rad) per exposure.

(G) X-ray field/light field/image receptor/compression paddle alignment. All systems shall meet the following.

(i) All systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the x-ray field does not extend beyond any edge of the image receptor by more than 2.0% of the SID.

(ii) If a light field that passes through the x-ray beam limitation device is provided, it shall be aligned with the x-ray field so that the total of any misalignment of the edges of the light field and the x-ray field along either the length or the width of the visually defined field at the plane of the breast support surface shall not exceed 2.0% of the SID.

(iii) The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1.0% of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

(H) Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.

(I) System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.

(J) Radiation output. The system shall be capable of producing a minimum output of 7.0 mGy air kerma per second (800 milliroentgen (mR) per second) when operating at 28 kVp in the standard mammography mode at any SID where the system is designed to operate. The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.

(K) Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides the following:

(i) an override capability to allow maintenance of compression;

(ii) a continuous display of the override status; and

(iii) a manual emergency compression release that can be activated in the event of power or automatic release failure.

(L) The technique settings used for subparagraph (F) of this paragraph and paragraph (2) of this subsection shall be those used by the facility for its clinical images of a standard breast.

(6) Densitometer and sensitometer. The calibration of the densitometer and sensitometer must be in accordance with the manufacturer's specifications.

(7) Quality control tests - other modalities. For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in paragraph (5)(F) of this subsection.

(8) Mobile service operation. The registrant shall verify that mammography machines used to produce mammograms at more than one location meet the requirements in paragraphs (1) - (7) of this subsection. In addition, at each examination location, before any examinations are conducted, the registrant shall verify satisfactory performance of the mammography machines by using a test method that establishes the adequacy of the image quality produced by the machine. Processor performance shall be in accordance with paragraph (1) of this subsection.

(9) Use of test results. After completion of the tests specified in paragraphs (1) - (8) of this subsection, the following shall occur.

(A) The registrant shall compare the test results to the corresponding specified action limits; or, for nonscreen-film modalities, to the manufacturer's recommended action limits; or for post-move, pre-examination testing of mobile mammography machines, to the limits established in the test method used by the facility.

(B) Components of the mammography system that fail quality assurance tests shall have corrective actions as indicated in the following.

(i) If components in subclause (I) and (II) of this clause fail, corrective action shall be taken before any mammography films are processed:

(I) paragraph (1) of this subsection describing processor quality control; and

(II) paragraph (4)(A) of this subsection describing darkroom fog;

(ii) If components in subclause (I) - (VI) of this clause fail, corrective action shall be taken before any mammography examinations are performed:

(I) paragraph (2) of this subsection describing phantom image quality;

(II) paragraph (4)(B) of this subsection describing screen-film contact;

(III) paragraph (4)(C) of this subsection describing compression device performance;

(IV) paragraph (5)(F) of this subsection describing dosimetry;

(V) paragraph (7) of this subsection describing quality control tests of other modalities; and

(VI) paragraph (8) of this subsection describing quality control tests for mobile mammography machines.

(iii) If components in the remaining quality assurance tests in subsection (v) of this section fail, corrective action shall be taken within 30 days of the test date.

(C) Documentation of the tests and the corrective actions described in subparagraph (B) of this paragraph shall be maintained in accordance with subsection (ff) of this section.

(10) Surveys. At least once a year, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist.

(A) At a minimum, this survey shall include the following:

(i) performance of tests to ensure that the facility meets the quality assurance requirements of the weekly phantom image quality test described in paragraph (2) of this subsection, the annual tests described in paragraph (5) of this subsection, and if applicable, quality control tests as described for other modalities in paragraph (7) of this subsection and for mobile service operations as described in paragraph (8) of this subsection; and

(ii) evaluation of the adequacy of the results of all tests conducted by the facility as well as written documentation of any corrective actions taken and their results in accordance with paragraphs (1) - (4) of this subsection, and, if applicable, paragraphs (7) and (8) of this subsection.

(B) The medical physicist shall provide a written survey report to the facility within 30 days of the date of the survey. The report shall include a summary of the tests performed by the medical physicist in subparagraph (A)(i) of this paragraph and the review of the tests performed by the facility in subparagraph (A)(ii) of this paragraph. The report shall also contain recommendations for any required corrective actions.

(C) If the following tests indicate deficiencies, the physicist shall give a preliminary oral or written report to the facility within 72 hours of the survey:

(i) processor quality control in accordance with paragraph (9)(B)(i)(I) of this subsection;

(ii) phantom images, screen-film contact, compression device performance, or dosimetry in accordance with paragraph (9)(B)(ii)(I) - (IV) of this subsection;

(iii) quality control tests for other modalities, if applicable, in accordance with paragraph (9)(B)(ii)(V) of this subsection; or

(iv) quality control tests for mobile mammography machines, if applicable, in accordance with paragraph (9)(B)(ii)(VI) of this subsection.

(D) The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey.

(E) The survey report shall be maintained by the registrant in accordance with subsection (ff) of this section.

(11) Mammography equipment evaluations. Additional evaluations of mammography machines or image processors shall be conducted whenever a new mammography machine or processor is installed, a mammography machine or processor is disassembled and reassembled at the same or a new location, major components of mammography machine are changed or repaired, or a processor is overhauled or reconditioned. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in this subsection and subsection (s) of this section.

(A) All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing.

(B) The mammography equipment evaluation and dosimetry shall be performed by a medical physicist or by an individual under the direct supervision of a medical physicist.

(12) Facility cleanliness. The registrant shall establish and implement adequate protocols for maintaining darkroom, screen, and view box cleanliness and shall document that all cleaning procedures are performed at the frequencies specified in the protocols.

(13) Calibration of air kerma measuring instruments. Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography machine shall be calibrated at least once every two years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of plus or minus 6.0% (95% confidence level) in the mammography energy range.

(14) Infection control. Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

(A) comply with all applicable federal, state, and local regulations pertaining to infection control; and

(B) comply with the manufacturer's recommended procedures for the cleaning and disinfection of the mammography equipment used in the facility; or

(C) if adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

(w) Quality assurance - mammography medical outcomes audit. Each registrant shall establish and maintain a mammography medical outcomes audit program to follow-up positive mammographic assessments and to correlate pathology results with the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.

(1) General requirements. Each registrant shall establish a system to collect and review outcome data for all mammograms performed, including follow-up on the disposition of all positive mammograms and correlation of pathology results with the interpreting physician's mammography report. Analysis of these outcome data shall be made individually and collectively for all interpreting physicians at the facility. In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate follow-up on surgical and/or pathology

results and review of the mammograms taken prior to the diagnosis of a malignancy.

(2) Frequency of audit analysis. The facility's first audit analysis shall be initiated no later than 12 months after the date the facility becomes certified or 12 months after April 28, 1999, whichever date is the latest. This audit analysis shall be complete within an additional 12 months to permit completion of diagnostic procedures and data collection. Subsequent audit analyses will be conducted at least once every 12 months. These shall be maintained in accordance with subsection (ff) of this section.

(3) Reviewing interpreting physician. Each lead interpreting physician or an interpreting physician designated by the lead interpreting physician shall review the medical outcomes audit data at least once every 12 months. This individual shall analyze the results of the audit and shall be responsible for the following:

(A) recording the dates of the audit period(s);

(B) documenting the results;

(C) notifying other interpreting physicians of their results and the registrant's aggregate results; and

(D) documenting any follow up actions and the nature of the follow up.

(x) Mammographic procedure and techniques for mammography of patients with breast implants. Each registrant shall have a procedure to inquire whether or not the patient has breast implants prior to the mammographic exam. Except where contraindicated, or unless modified by a physician's directions, patients with breast implants shall have mammographic views to maximize the visualization of breast tissue.

(y) Complaints. Each accredited facility shall do the following:

(1) establish a written procedure for collecting and resolving consumer complaints;

(2) maintain a record of each serious complaint received by the facility in accordance with subsection (ff) of this section; and

(3) report unresolved serious complaints to the facility's FDA-approved accreditation body within 30 days of receiving the complaint.

(z) Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(aa) Additional mammography review, targeted clinical reviews, and patient notification.

(1) If the agency certifying body believes that mammography quality at a facility may have been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency certifying body, for review by the FDA-approved accreditation body.

(2) If the agency certifying body determines that mammography quality at a facility has been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency certifying body, for review by the FDA-approved accreditation body. The agency certifying body may require such facility to notify patients who received mammograms, and their referring physicians. The notification shall include the deficiencies presenting such risk, the potential consequences to the patient, appropriate remedial measures, and such other relevant information as the agency certifying body may require. Such notification shall occur within a time frame and in a manner specified by the agency.

(3) The agency certifying body, the agency accreditation body or another FDA-approved accreditation body, or the FDA may request a targeted clinical image review due to, but not limited to, serious complaints or severe items of non-compliance.

(bb) Requirements for machines used exclusively for interventional breast radiography. Machines used exclusively for interventional breast radiography, including mobile service operations, are not included in the definition of mammography systems. These machines are not required to be accredited or to receive certification by the agency certifying body in accordance with 21 CFR, Part 900.11. However, each facility using such machines shall apply for and receive a certification from the agency. The facility shall comply with the following:

(1) purpose and scope in accordance with subsections (a) and (b) of this section;

(2) applicable definitions in subsection (c) of this section;

(3) prohibitions in accordance with subsection (d)(2) and (3) of this section;

(4) exemptions in accordance with subsection (e)(2), (3), and (5) of this section;

(5) certification requirements in accordance with subsection (f)(2) - (4) and (5)(B) of this section and the requirement to submit a medical physicist's survey in accordance with paragraph (13) of this subsection;

(6) issuance of certification and specific terms and conditions of certification in accordance with subsections (g)(1) and (1)(B), (2), (3), and (m) of this section;

(7) responsibilities of a registrant in accordance with subsection (n)(1), (2)(A), (D) and (E), and (4) - (6) of this section;

(8) expiration, termination, modification and revocation of certification in accordance with subsections (l), (p), and (q) of this section;

(9) renewal of certification as follows:

(A) the registrant shall file an application for renewal of certification in accordance with subsection (f)(2) - (4) and (5)(B) of this section and submit a medical physicist's survey in accordance with paragraph (13) of this subsection; and

(B) if a registrant files an application in proper form at least 30 days before the existing certification expires, such existing certification shall not expire until the application status has been determined by the agency certifying body;

(10) personnel requirements for a general certificate, medical radiologic technologist in accordance with the Medical Radiologic Technologist Certification Act, Texas Occupational Code, Chapter 601;

(11) personnel requirements for medical physicists in accordance with subsection (r)(3) of this section;

(12) requirement to have a written quality assurance program to ensure the safety, reliability, clarity, and accuracy of services performed at the facility, including corrective actions to be taken if images are of poor quality;

(13) requirement to have a medical physicist perform an annual survey of AEC, kVp, focal spot condition, HVL, and dosimetry tests in accordance with subsection (v)(5)(A) - (F) of this section. The medical physicist shall provide a preliminary oral or written report of deficiencies within 72 hours of the survey if it involves dosimetry. The

medical physicist shall prepare a written report for the facility within 30 days of the date of the survey to include the following:

(A) a summary of the tests in the annual survey with recommendations for corrective actions; and

(B) date and signature of the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey;

(14) the requirement to correct deficiencies indicated in the test results for dosimetry in accordance with subsection (v)(9)(B)(ii)(IV) of this section before any further examinations are performed;

(15) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(16) occupational dose limits and personnel monitoring in accordance with §289.231 of this title;

(17) provision of a technique chart in accordance with subsection (ee)(2) of this section;

(18) the requirement to maintain receipt, transfer, disposal, calibration, and maintenance records in accordance with subsection (ee)(3) and (8) of this section;

(19) requirement to have a viewing system in accordance with subsection (ee)(4) of this section;

(20) requirement to prevent exposure of individuals other than the patient in accordance with subsection (ee)(5) of this section;

(21) maintenance of applicable records in subsection (ff) of this section;

(22) inspection requirements in accordance with subsection (gg) of this section, except for subsection (gg)(1) of this section; and

(23) equipment requirements in accordance with §289.227(h) of this title (relating to Use of Radiation Machines in the Healing Arts).

(cc) Self-referral mammography. Any person proposing to conduct a self-referral mammography program shall not initiate such a program without prior approval of the agency. When requesting such approval, that person shall submit the following information:

(1) the number and type of views (or projections);

(2) the age of the population to be examined and the frequency of the exam following established, nationally recognized criteria, such as those of the American Cancer Society, American College of Radiology (ACR), or the National Council on Radiation Protection and Measurements;

(3) written procedures to include methods of:

(A) advising patients and private physicians of the results of the mammography examination in accordance with subsection (t)(2) of this section;

(B) follow-up with patients and physicians in accordance with subsection (t)(3) of this section; and

(C) recommending to patients who do not have a physician means of selecting a physician; and

(4) methods for educating mammography patients in breast self-examination techniques and on the necessity for follow-up by a physician.

(dd) Medical research and investigational devices.

(1) Any research using radiation producing devices on humans must be approved by an IRB as required by Title 45, CFR, Part 46 and Title 21, CFR, Part 56. The IRB must include at least one licensed physician to direct any use of radiation in accordance with §289.231(b) of this title.

(2) Facilities with mammography machines with investigational device exemptions that are involved in clinical studies must comply with primary regulations that govern the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include the following:

(A) 21 Code of Federal Regulations (CFR), Part 812, *Investigational Device Exemptions*;

(B) 21 CFR, Part 50, *Protection of Human Subjects*;

(C) 21 CFR, Part 56, *Institutional Review Boards*;

(D) 21 CFR, Part 54, *Financial Disclosure by Clinical Investigators*; and

(E) 21 CFR, Part 821, Subpart C, *Design Controls of the Quality System Regulation.*

(ee) Other operating procedures.

(1) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for the safe operation of the particular system. These procedures shall include, but are not limited to, the items in subsection (hh)(3) of this section.

(2) Technique chart. A chart or manual shall be provided or electronically displayed in the vicinity of the control panel of each machine that specifies technique factors to be utilized versus patient's anatomical size. The technique chart shall be used by all operators.

(3) Receipt, transfer, and disposal of mammography machines. Each registrant shall maintain records showing the receipt, transfer, and disposal of mammographic machines. These records shall include the date of receipt, transfer, or disposal; the name and signature of the individual making the record; and the manufacturer's model and serial number from the control panel of the mammographic machine. Records shall be maintained in accordance with subsection (ff) of this section for inspection by the agency.

(4) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system shall be provided to permit the operator to continuously observe the patient during irradiation. The operator shall be able to maintain verbal, visual, and aural contact with the patient.

(5) Exposure of individuals other than the patient. Only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiation exposure unless such individual's assistance is required.

(6) Protective devices. Protective devices shall be utilized when required, as in paragraph (7) of this subsection.

(A) Protective devices shall be of no less than 0.25 mm lead equivalent material.

(B) Protective devices, including aprons, gloves, and shields shall be checked annually for defects such as holes, cracks, and tears. These checks may be performed by the registrant by visual or tactile means, or x-ray imaging. If a defect is found, protective devices shall be replaced or removed from service until repaired. A record of this test shall be made and maintained by the registrant in accordance with subsection (ff) of this section for inspection by the agency.

(7) Holding of patient or image receptor.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits.

(B) If a patient or image receptor must be held by an individual during an exposure, that individual shall be protected with appropriate shielding devices described in paragraph (6) of this subsection.

(C) The registrant's written operating and safety procedures required by paragraph (1) of this subsection shall include the following:

(i) a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

(ii) a procedure used for selecting an individual to hold or support the patient or image receptor.

(D) In those cases where the patient must hold the image receptor, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.25 mm lead equivalent material.

(8) Calibration, maintenance, and modifications. Each registrant shall maintain records showing calibrations, maintenance, and modifications performed on each mammographic machine. These records shall include the date of the calibration, maintenance, or modification performed; the name of the individual making the record; and the manufacturer's model and serial number of the control panel of the mammographic machine. These records shall be maintained in accordance with subsection (ff) of this section.

(ff) Record requirements. Records required by this section shall be maintained for inspection by the agency in accordance with paragraph (3) of this subsection. Records may be maintained electronically in accordance with §289.231(ff)(3) of this title.

(1) Records for mammography machines authorized for mobile service operations.

(A) Copies of the following shall be kept with mammography machines authorized for mobile services:

(i) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(ii) medical radiologic technologists' credentials;

(iii) current quality control records for at least the last 90 calendar days for on-board processors in accordance with subsection (v)(1) of this section;

(iv) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;

(v) copy of certification;

(vi) certification of inspection in accordance with subsection (gg)(5) of this section;

(vii) notice of failure from last inspection in accordance with subsection (gg)(6) of this section, if applicable; and

(viii) copy of mammography accreditation.

(B) Copies of all other records required by this section shall be maintained at a specified location.

(2) Records required at separate authorized use locations. Copies of the following shall be kept at each separate authorized use location:

(A) credentials for interpreting physicians operating at that location in accordance with subsection (r)(1) of this section;

(B) credentials for medical radiologic technologists operating at that location in accordance with subsection (r)(2) of this section;

(C) credentials for medical physicists operating at that location in accordance with subsection (r)(3) of this section;

(D) continuing education and experience records for interpreting physicians, medical radiologic technologists, and medical physicists operating at that location in accordance with subsection (r)(1)(C), (2)(C), and (3)(C) of this section;

(E) mandatory training records for interpreting physicians, medical radiologic technologists, and medical physicists operating at that location in accordance with subsection (r)(1)(E), (2)(E), and (3)(E) of this section, if applicable;

(F) current physicist annual survey of the mammography system;

(G) current §289.203 of this title, §289.226 of this title, §289.230 of this title, §289.231 of this title, and §289.234 of this title if accredited by the agency accreditation body;

(H) copy of certification;

(I) quality assurance program in accordance with subsections (u), (v), and (w) of this section;

(J) quality control records in accordance with subsection (u)(2) of this section;

(K) operating and safety procedures in accordance with subsection (ee)(1) of this section;

(L) records of receipts, transfers, and disposal in accordance with subsection (ee)(3) of this section;

(M) calibration, maintenance, and modification records in accordance with subsection (ee)(8) of this section;

(N) certification of inspection in accordance with subsection (gg)(5) of this section;

(O) notification of failure in accordance with subsection (gg)(6) of this section, if applicable;

(P) records of notification of patients in accordance with subsection (gg)(10) this section; and

(Q) copy of mammography accreditation.

(3) Time requirements for record keeping. Time requirements for record keeping shall be according to the following chart. Figure: 25 TAC §289.230(ff)(3)

(gg) Inspections. In addition to the requirements of §289.231(kk) of this title, the following applies to inspections of mammography systems.

(1) The agency may inspect each mammography system that receives a certification in accordance with this chapter not later than the 60th day after the date the certification is issued.

(2) The agency may inspect, at least once annually, each mammography system that receives a certification.

(3) To protect the public health, the agency may conduct more frequent inspections than required by this subsection.

(4) The agency may make reasonable attempts to coordinate inspections in this section with other inspections required in accordance with this chapter for the facility where the mammography system is used.

(5) After each satisfactory inspection, the agency shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection shall be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection may include the following:

(A) specific identification of the mammography system inspected;

(B) the name and address of the facility where the mammography system was used at the time of the inspection; and

(C) the date of the inspection.

(6) Any severity level I violation involving a mammography system, found by the agency, in accordance with §289.205 of this title, constitutes grounds for posting notice of failure of the mammography system to satisfy agency requirements.

(A) Notification of such failure shall be posted:

(i) on the mammography machine at a conspicuous place if the violation is machine-related; or

(ii) near the place where the mammography system practices if the violation is personnel-related; and

(iii) in a sufficient number of places to permit the patient to observe the notice.

(B) The notice of failure shall remain posted until the facility is authorized to remove it by the agency. A facility may post documentation of corrections of the violations submitted to the agency along with the notice of failure until approval to remove the notice of failure is received from the agency.

(7) Facilities that receive a severity level I violation shall notify patients on whom the facility performed a mammogram during the 30 days preceding the date of the inspection that revealed the failure. The facility shall:

(A) inform the patient that the mammography system failed to satisfy the agency certifying body's standards;

(B) recommend that the patient have another mammogram performed at a facility with a certified mammography system; and

(C) list the three facilities closest to the original testing facility that have a certified mammography system.

(8) In addition to the requirements of paragraph (7) of this subsection, the agency may require a facility to notify a patient of any other failure of the facility's mammography system to meet the agency's certification standards.

(9) The patient notification shall include the following:

(A) an explanation of the mammography system failure to the patient; and

(B) the potential consequences to the mammography patient.

(10) The registrant shall make a record of the mammography patients notified in accordance with paragraphs (7) and (8) of this subsection for inspection by the agency. The records shall include the name and address of each mammography patient notified, date of notification, and a copy of the text sent to the individual. The records shall be maintained in accordance with subsection (ff) of this section.

(hh) Appendices.

(1) Subjects to be included in mammography training for medical radiologic technologists shall include, but not be limited to, the following:

(A) breast anatomy and physiology;

(B) positioning and compression;

(C) quality assurance/quality control techniques;

(D) imaging of patients with breast implants; and

(E) at least eight hours of training in each mammography modality to be used by the technologist in performing mammography exams.

(2) Subjects to be included in mammography training for interpreting physicians shall include, but not be limited to, the following:

(A) radiation physics, including radiation physics specific to mammography;

(B) radiation effects;

(C) radiation protection; and

(D) interpretation of mammograms. This shall be under the direct supervision of a physician who meets the requirements of subsection (r)(1) of this section.

(3) Operating and safety procedures. The registrant's operating and safety procedures shall include, but are not limited to, the following procedures as applicable:

(A) posting notices to workers in accordance with §289.203(b) of this title;

(B) instructions to workers in accordance with §289.203(c) of this title;

(C) notifications and reports to individuals in accordance with §289.203(d) of this title;

(D) ordering x-ray exams in accordance with §289.231(b) of this title;

(E) occupational dose requirements in accordance with §289.231(m) of this title;

(F) personnel monitoring requirements in accordance with §289.231(n) and (q) of this title;

(G) posting of a radiation area in accordance with §289.231(x) and (y) of this title;

(H) credentialing requirements for lead interpreting physicians, interpreting physicians, medical radiologic technologists, and medical physicists in accordance with subsection (r) of this section;

(I) retention of clinical images in accordance with subsection (t)(4) of this section;

(J) quality assurance program in accordance with subsections (u) - (w) of this section;

(K) image quality and corrective action for images of poor quality in accordance with subsection (u)(1)(B)(i) of this section;

(L) repeat analysis in accordance with subsection (v)(3)(B) of this section;

(M) procedures and techniques for mammography patients with breast implants in accordance with subsection (x) of this section;

(N) procedure to handle complaints in accordance with subsection (y) of this section;

(O) self-referral mammography in accordance with subsection (cc) of this section;

(P) use of a technique chart in accordance with subsection (ee)(2) of this section;

(Q) exposure of individuals other than the patient in accordance with subsection (ee)(5) of this section;

(R) use of protective devices in accordance with subsection (ee)(6) of this section; and

(S) holding of patients or image receptors in accordance with subsection (ee)(7) of this section.

(4) Phantom image scoring protocol for film-screen modality. Each of the following object groups are to be scored separately. In order to receive a passing score on the phantom image, all three test object groups must pass. A failure in any one of the areas results in a phantom failure.

(A) Fibers. A score of 4.0 for fibers is required to meet the evaluation criteria. The diameter size of fibers are 1.56 mm, 1.12 mm, 0.89 mm, 0.75 mm, 0.54 mm, and 0.40 mm. Score the fibers as follows.

(i) Begin with the largest fiber and move down in size, adding one point for each full fiber until a score of zero or one half is given. Stop counting at the first point where you lose visibility of objects.

(ii) If the entire length of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one.

(iii) If at least half, but not all, of the fiber can be seen and its location and orientation are correct, that fiber receives a score of one half.

(iv) If less than one half of a fiber can be seen or if the location or orientation are incorrect, that fiber receives a score of zero.

(v) After determining the last fiber to be counted, look at the overall background for artifacts. If there are background objects that are fiber-like in appearance and are of equal or greater brightness than the last visible half or full fiber counted, subtract the last half or full fiber scored.

(B) Speck groups. A score of 3.0 for speck groups is required to meet the evaluation criteria. Diameter sizes of speck groups are 0.54 mm, 0.40 mm, 0.32 mm, 0.24 mm, and 0.16 mm. There are six specks per group. Score the speck groups as follows.

(i) Begin with the largest speck group and move down in size adding one point for each full speck group until a score of one half or zero is given, then stop.

(ii) If at least four of the specks in any group are visualized, the speck group is scored as one.

(iii) If two or three specks in a group are visualized, the score for the group is one half.

(iv) If one speck or no specks from a group are visualized, the score is zero.

(v) After determining the last speck group to receive a full or one-half point, look at the overall background for artifacts. If there are speck-like artifacts within the insert region of the phantom that are of equal or greater brightness than individual specks counted in the last visible half or full speck group counted, subtract the artifact speck from the observed specks in the last group scored, one by one. Note that the highest number of speck-like artifacts that can potentially be subtracted is the number of visible specks that were scored in the last group. Repeat the scoring of the last visible speck group after these deductions.

(C) Masses. A score of 3.0 is required to meet the evaluation criteria. Diameter sizes of masses are 2.00 mm, 1.00 mm, 0.75 mm, 0.50 mm, and 0.25 mm. Score the masses as follows.

(i) Begin with the largest mass and add one point for each full mass observed until a score of one half or zero is assigned.

(ii) Score one for each mass that appears as a minus density object in the correct location that can be seen clearly enough to observe round, circumscribed borders.

(iii) Score one half if the mass is clearly present in the correct location, but the borders are not visualized as circular.

(iv) After determining the last full or half mass to be counted, look at the overall background for artifacts. If there are background objects that are mass-like in appearance and are of equal or greater visibility than the last visible mass, subtract the last full or half point assigned from the original score.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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25 TAC §289.234

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes new §289.234, concerning mammography accreditation.

BACKGROUND AND PURPOSE

Section 289.230 concerning certification of mammography systems and accreditation of mammography facilities is being repealed and divided into two new rules, one concerning certification and the other concerning accreditation. The repeal and

new rules are the result of the agency applying to the United States Food and Drug Administration (FDA) to become a certifying body for mammography facilities. The FDA recommended that the current rules be separated into certification and accreditation rules for clarification, as all mammography facilities in the state must have certification with the agency, while accreditation may be with the agency or with the American College of Radiology. The accreditation requirements will be incorporated into new §289.234, "Mammography Accreditation." Certification requirements will be located in §289.230 of this title, "Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography" that is addressed in a separate preamble.

SECTION-BY-SECTION SUMMARY

The new section adds definitions for agency accreditation body and agency certifying body to define terms used in this section. Definitions for accreditation and targeted clinical image review are revised to be consistent with the FDA's Mammography Quality Standards Act (MQSA) rules. The section contains requirements for facilities that choose to be accredited with the agency including denials, suspensions and revocations, and appeals.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the section is to protect public health and safety by affording facilities the opportunity to become certified and accredited for mammography through one agency. Facilities will also have the option of becoming accredited through the American College of Radiology.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2239, or by email to cindy.cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web site (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or cindy.cardwell@dshs.state.tx.us, if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new section affects the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.234. Mammography Accreditation.

(a) Purpose. This section provides for the accreditation of mammography facilities. The use of all mammography machines accredited in accordance with this section shall be by or under the supervision of a physician licensed by the Texas Medical Board.

(b) Scope. In addition to the requirements of this section, all mammography facilities are subject to the requirements of §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography), and §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation). This section does not apply to an entity under the jurisdiction of the federal government.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation--An approval of a mammography machine within a mammography facility by an accreditation body. A facility may be accredited by the agency accreditation body or another United States Food and Drug Administration (FDA)-approved accreditation body.

(2) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(3) Additional mammography review--At the request of the FDA or an accreditation body, a review by the accreditation body of clinical images and other relevant facility information necessary to assess conformation with the accreditation standards. The reviews include the following:

(A) additional mammography review with interpretation; or

(B) additional mammography review without interpretation.

(4) Adverse event--An undesirable experience associated with mammography activities within the scope of this section. Adverse events include but are not limited to:

(A) poor image quality;

(B) failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

(C) use of personnel who do not meet the applicable requirements in §289.230(r) of this title.

(5) Agency accreditation body--For the purpose of this section, the agency as approved by the FDA under Title 21, Code of Federal Regulations (CFR), Part 900.3(d), to accredit mammography facilities in the State of Texas.

(6) Agency certifying body--For the purpose of this section, the agency, as approved by FDA, under Title 21, CFR, Part 900.21, that certifies facilities within the State of Texas to perform mammography services.

(7) Certification--An authorization for the use of a mammography system or the certification of mammography machines used for interventional breast radiography.

(8) Clinical image--See the definition for mammogram.

(9) Consumer--An individual who chooses to comment or complain in reference to a mammography examination. The individual may be the patient or a representative of the patient, such as a family member or referring physician.

(10) Facility--A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including the following:

(A) the operation of equipment to produce a mammogram;

(B) processing of film;

(C) initial interpretation of the mammogram; or

(D) maintaining the viewing conditions for that interpretation.

(11) FDA-approved accreditation body--An entity approved by the FDA under Title 21, CFR, Part 900.3(d), to accredit mammography facilities.

(12) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(13) Image review board--A group of qualified review physicians and other individuals who review the clinical and phantom images and whose qualifications have been established by the accreditation body and the accreditation body's qualifications have been approved by the FDA.

(14) Interpreting physician--A licensed physician who interprets mammographic images and who meets the requirements of §289.230(r)(1) of this title.

(15) Mammogram--A radiographic image produced through mammography.

(16) Mammography--The use of x-radiation to produce an image of the breast that may be used to detect the presence of pathological conditions of the breast. For the purposes of this section, mammography does not include radiography of the breast performed as follows:

(A) during invasive interventions for localization or biopsy procedures except as specified in §289.230(z) of this title; or

(B) with an investigational mammography device as part of a scientific study conducted in accordance with FDA's investigational device exemption regulations.

(17) Mammography machine(s)--A unit consisting of components assembled for the production of x-rays for use during mammography. These include, at a minimum, the following:

(A) an x-ray generator;

(B) an x-ray control;

(C) a tube housing assembly;

(D) a beam limiting device; and

(E) supporting structures.

(18) Mammography system--A system that includes the following:

(A) an x-ray machine used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging-processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiologic technologist who performs mammography; and

(F) a physician who engages in, and who meets the requirements of this section relating to the reading, evaluation, and interpretation of mammograms.

(19) Medical physicist--An individual who performs surveys and evaluations of mammographic equipment and facility quality

assurance programs in accordance with this section and who meets the qualifications in §289.230(r)(3) of this title.

(20) Medical radiologic technologist (operator of equipment)--An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations, who performs mammography examinations in accordance with this section and who meets the qualifications in §289.230(r)(2) of this title.

(21) Patient--Any individual who undergoes a mammography examination in a facility, regardless of whether the person is referred by a physician or is self-referred.

(22) Phantom--A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.

(23) Phantom image--A radiographic image of a phantom.

(24) Radiation machine--For the purposes of this part, radiation machine also means mammography machine.

(25) Reinstatement fee--The fee in accordance with §289.204(h) of this title charged to reinstate an application for a mammography machine that has been denied accreditation or whose application has been abandoned in accordance with subsection (h)(3) of this section.

(26) Review physician--An individual who is qualified to review clinical images on behalf of the accreditation body. To be qualified, this individual shall comply with the following:

(A) meet the interpreting physician requirements of §289.230(r)(1) of this title;

(B) be trained and evaluated in the clinical image review process for the types of clinical images to be evaluated by a review physician by the accreditation body before designation as a review physician and periodically thereafter; and

(C) clearly document findings and reasons for assigning a particular score to any clinical image and provide information to the facility for use in improving the attributes for which significant deficiencies were identified.

(27) Serious adverse event--An adverse event that may significantly compromise clinical outcomes, or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

(28) Serious complaint--A report of a serious adverse event.

(29) Survey--An on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

(30) Targeted clinical image review--A review of a minimum of two sets of "negative" clinical images from a specific date, or date range, at the request of the agency.

(d) Accreditation of mammography facilities.

(1) All mammography facilities shall be accredited by an FDA-approved accreditation body and shall meet the quality standards in §289.230(r) - (aa) of this title. In order to qualify for certification in accordance with §289.230 of this title, new facilities applying to the agency accreditation body shall receive acceptance of the accreditation application.

(2) The facility shall submit the following information in addition to the information required in subsection §289.230(f) of this title:

(A) an application for accreditation on forms and in accordance with accompanying instructions prescribed by the agency accreditation body;

(B) the appropriate accreditation fee prescribed in §289.204 of this title; and

(C) evidence that the medical physicist's survey and mammography equipment evaluation in accordance with §289.230(v)(10) and (11) of this title was performed within the following time frames:

(i) no more than six months before the date of the accreditation application for new facilities seeking accreditation;

(ii) no more than 14 months before the date of the application for accreditation for facilities changing accreditation to one issued by the agency accreditation body; or

(iii) no more than 14 months before the date of the application for renewal of accreditation for facilities accredited by the agency accreditation body.

(3) Upon notification by the agency accreditation body, each applicant shall submit clinical and phantom images directly to the image review board.

(e) Issuance of accreditation of a mammography facility. An accreditation document will be issued when the mammography facility meets the requirements of subsection (d) of this section and §289.204 of this title and becomes accredited by the agency accreditation body. In order for an accreditation to be issued, the agency accreditation body must receive acceptable dose evaluation information from the dosimetry processor and be notified by the image review board that the applicant met the criteria for clinical images and phantom images, and dose evaluation.

(f) Denial or abandonment of an application for accreditation of mammography facilities.

(1) Any application for accreditation may be denied by the agency accreditation body when the applicant fails to meet established criteria for accreditation in accordance with subsection (d) of this section.

(2) Before the agency accreditation body denies an application for accreditation, the agency shall give notice of the denial, the facts warranting the denial, and shall afford the applicant an opportunity for a hearing in accordance with §289.205(h) of this title. If no request for a hearing is received by the director of the Radiation Control Program within 30 days of date of receipt of the notice, the agency may proceed to deny. The applicant shall have the burden of proof showing cause why the application should not be denied.

(3) Action on an accreditation application will be abandoned due to lack of response by the applicant to a request for information by the agency accreditation body. Abandonment of such actions does not provide an opportunity for a hearing; however, the applicant retains the right to resubmit the application and pay a reinstatement fee at any time.

(g) Suspension and revocation of accreditation of mammography facilities.

(1) Suspension of accreditation of mammography facilities.

(A) An accreditation of a mammography facility may be suspended or revoked for any of the following reasons:

(i) any material false statement in the application or any statement of fact required under provision of the Act;

(ii) conditions revealed by such application or statement of fact or any report, record, inspection, or other means that would warrant the agency accreditation body to refuse to grant an accreditation of mammography facility on an original application; or

(iii) failure to observe any of the terms and conditions of the Act, this chapter, or order of the agency.

(B) Before the agency accreditation body suspends or revokes an accreditation of a mammography facility, the agency accreditation body shall give notice by personal service or by certified mail, addressed to the last known address, of the facts or conduct alleged to warrant the suspension or revocation by complaint, and order the accredited mammography facility to show cause why the mammography facility accreditation should not be suspended or revoked. The accredited mammography facility shall be given an opportunity to request a hearing on the matter no later than 30 days after receipt of the notice.

(C) Any accredited mammography facility against whom the agency accreditation body contemplates an action described in subparagraph (A) of this paragraph may request a hearing by writing the director within 30 days of receipt of the notice.

(i) The written request for a hearing must contain the following:

(I) a statement requesting a hearing; and

(II) the name, address, and identification number of the accredited mammography facility against whom the action is being taken.

(ii) Failure to submit a written request for a hearing within 30 days will render the agency accreditation body action final.

(D) If the agency accreditation body suspends the accreditation of a mammography facility in accordance with subparagraph (A) of this paragraph, the suspension shall remain in effect until the agency accreditation body determines the following:

(i) that allegations of violations or misconduct were not substantiated;

(ii) that violations of required standards have been corrected to the agency accreditation body's satisfaction; or

(iii) the facility's accreditation is revoked in accordance with §289.205 of this title.

(2) Revocation of accreditation of mammography facilities shall be in accordance with §289.205(g) of this title.

(h) Appeal of adverse accreditation or reaccreditation decisions that preclude certification or recertification.

(1) The appeal process described in this subsection is available only for adverse accreditation or reaccreditation decisions that preclude certification by the agency certifying body. Agency certifying body decisions to suspend or revoke certificates that are already in effect will be handled in accordance with §289.230(h) of this title.

(2) A facility that has been denied accreditation or reaccreditation is entitled to an appeals process from the agency accreditation body, in accordance with §289.205 of this title. A facility must avail itself of the accreditation body's appeal process before requesting reconsideration from the agency certifying body.

(3) A facility that cannot achieve satisfactory resolution of an adverse accreditation decision through the accreditation body's appeal process is entitled to further appeal to the FDA.

(4) A facility cannot perform mammography services while an adverse accreditation decision is being appealed.

(i) Specific terms and conditions of accreditation of mammography facilities.

(1) Each accreditation document issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable requirements and orders of the agency accreditation body.

(2) No accreditation document issued by the agency accreditation body under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person.

(j) Responsibilities of an accredited facility. A facility shall notify the agency accreditation body of any changes that would render the information contained in the application inaccurate.

(k) Expiration and renewal of accreditation of mammography facilities.

(1) The accreditation expires at the end of the day in the month and year stated on the accreditation document.

(2) An application for renewal of accreditation with the agency accreditation body shall be filed in accordance with subsection (d) of this section and with fees in accordance with §289.204 of this title.

(3) A mammography facility filing an application for renewal in accordance with subsection (d) of this section and with fees in accordance with §289.204 of this title before the existing accreditation expires:

(A) may continue to perform mammography until the expiration of the accreditation; or

(B) if the facility receives written authorization from the agency accreditation body, may continue to perform mammography until the review process is complete and the accreditation status has been determined by the agency accreditation body.

(4) Accreditation for a mammographic facility is valid for three years from the date of issuance, unless accreditation of the facility is suspended or revoked prior to such deadline.

(5) Issuance of renewal of accreditation shall be in accordance with subsection (e) of this section.

(l) Complaints. Each facility accredited by the agency accreditation body shall do the following:

(1) establish a written procedure for collecting and resolving consumer complaints;

(2) maintain a record of each serious complaint received by the facility in accordance with §289.230(ff)(3) of this title; and

(3) report unresolved serious complaints to the accreditation body within 30 days of receiving the complaint.

(m) Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

(n) Additional mammography review and patient notification. If the agency certifying body or the agency accreditation body believes that mammography quality at a facility may have been compromised and presents a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by

the agency certifying body or the agency accreditation body for review by the accreditation body.

(o) Record requirements. Records required by this section shall be maintained for inspection by the agency in accordance with subsection §289.230(ff)(3) of this title. Records may be maintained electronically in accordance with §289.231(ff)(3) of this title.

(p) On-site facility visit, targeted clinical image review, and random clinical image review.

(1) Each accredited facility shall afford the agency accreditation body, at all reasonable times, opportunity to audit the facility where mammography equipment or associated equipment is used or stored.

(2) Each accredited facility shall make available to the agency accreditation body for inspection, upon reasonable notice, records maintained in accordance with this chapter.

(3) Each accredited facility shall, upon request by the agency accreditation body or the agency certifying body, make clinical images available to the image review board for a targeted clinical image review or a random clinical image review. The agency certifying body, the agency accreditation body, another FDA-approved accreditation body, or the FDA may request a targeted clinical image review due to, but not limited to, serious complaints or severe items of non-compliance.

(4) Annually, the agency accreditation body shall conduct on-site visits and random clinical image reviews of a sample of facilities to monitor and assess their compliance with standards established by the accreditation body. Other on-site visits may be conducted based on problems identified through inspections, serious complaints received from consumers or others, a previous history of noncompliance, or any other information in the possession of the accreditation body, inspectors, or FDA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603132
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 458-7111 x6972

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PART 15. COUNCIL ON CARDIOVASCULAR DISEASE AND STROKE

CHAPTER 1051. RULES

25 TAC §1051.1

The Texas Council on Cardiovascular Disease and Stroke (council) proposes new §1051.1, concerning the conduct of its meetings.

BACKGROUND AND PURPOSE

The new section is necessary to comply with the Health and Safety Code, Chapter 93, §93.012, which requires the council to adopt rules for the conduct of its meetings. The new section outlines the council's organization and rules of conduct for meetings.

SECTION-BY-SECTION SUMMARY

In accordance with Health and Safety Code, Chapter 93, new §1051.1 defines the council's officers and their duties, meetings, quorums, and its voting membership.

FISCAL NOTE

Casey Blass, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Casey Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Casey Blass has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section, which provides the public with a clear understanding of the council's voting membership. It is anticipated that administering the section as proposed will generate interest in council meetings through a clarification of the conduct of the meetings and provide improved understanding of cardiovascular disease and stroke.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jennifer Smith, Manager, Department of State Health Services, Disease Prevention and Intervention, Adult Health and Chronic Disease Group, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 2209, or by e-mail to Jennifer.Smith@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, Chapter 93, §93.012, which requires the council to adopt rules for the conduct of its meetings.

The proposed new section affects the Health and Safety Code, Chapter 93.

§1051.1. Conduct of Meetings.

(a) Applicable law. The Texas Council on Cardiovascular Disease and Stroke is created by Health and Safety Code, Chapter 93.

(b) Officers and their duties.

(1) The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

(2) The presiding officer shall preside at all council meetings at which he or she is in attendance, call meetings in accordance with this section, assist in the preparation of the agenda, appoint subcommittees or workgroups of the council as necessary and with council consensus, cause proper reports to be made to the governor, lieutenant governor and speaker of the house and serve as spokesperson for the

council. The presiding officer may serve as an ex-officio member of any subcommittee or workgroup of the council. The presiding officer may invite guests or speakers.

(3) The members of the council shall elect a vice-chairman each year.

(4) The vice-chairman shall perform the duties of the presiding officer in the absence or disability of the presiding officer. Should the office of the presiding officer become vacant, the vice-chairman shall serve until a successor is appointed.

(c) Meetings.

(1) The council shall meet at least quarterly. A meeting may be called with the agreement of Department of State Health Services staff and the presiding officer.

(2) Each meeting of the council shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551.

(3) A simple majority of the members of the council shall constitute a quorum for the purpose of transacting official business.

(4) The council is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(5) Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(6) Any action taken by the council must be approved by a majority vote of the public members present once quorum is established. Each public member shall have one vote. A public member may not authorize another individual to represent the member by proxy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603102
Michael Hawkins, M.D.
Chair
Council on Cardiovascular Disease and Stroke
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 6. NOTICE REQUIREMENTS TO CLAIMANTS REGARDING MOTOR VEHICLE REPAIRS

28 TAC §5.501

The Texas Department of Insurance proposes amendments to §5.501, concerning the procedures an insurer must follow in order to give the proper notice to first- and third-party claimants regarding their motor vehicle repair rights as required by the Insurance Code Article 5.07-1. The changes are proposed to reduce confusion, eliminate consumer frustration, and enable the Department to more efficiently allocate agency resources.

Article 5.07-1(a) provides that except as provided by rules adopted by the Commissioner, under an auto insurance policy that is delivered, issued for delivery, or renewed in this state an insurer may not, directly or indirectly, limit its coverage under a policy covering damage to a motor vehicle by specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle or by limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the motor vehicle covered under the policy. Article 5.07-1(e) provides that at the time the vehicle is presented to an insurer or an insurance adjuster or other person in connection with a claim for damage repair, the insurer or insurance adjuster or other person must provide to the beneficiary or third-party claimant notice of the provisions of Article 5.07-1. Article 5.07-1(e) also requires the Commissioner to adopt a rule establishing the method or methods insurers must use to comply with the statutorily required notice provisions of this subsection. Article 5.07-1(g) provides that in the settlement of liability claims by a third party against an insured for property damage claimed by the third party, an insurer may not require the third-party claimant to have repairs made by a particular repair person or facility or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products.

Many consumers confuse the Department's and insurance company's roles under the current notice requirements outlined in §5.501. The notice does not state how to contact the responsible insurance company nor does it clearly indicate the insurance company's role in the claims process. Instead, it prominently displays the Department's contact information and encourages claimants to call with questions about their rights. As a result, many calls to the Department must be redirected to the appropriate insurance company. These consumers must make an additional phone call to the appropriate insurer. It results in consumer frustration. It also taxes the Department's resources, increasing the amount of time other consumers must wait to have their calls answered.

To address these concerns, the proposed amended §5.501 clarifies the Department's role and distinguishes it from the insurance company's responsibilities by adding new language and requiring special formatting. The proposed language makes clear that the Department is responsible for providing information about Insurance Code Article 5.07-1, while insurance companies are responsible for providing detailed information about the nature of coverage under a particular policy. To emphasize the insurer's role, the proposed amended notice displays the insurance company's name, mailing address, phone number, fax number, and email or web address prominently in bold face type.

The proposed amended §5.501 makes a second important change. In an effort to better serve the Department's increasing number of Spanish-speaking callers, the notice must also be provided in Spanish. In 2002, the Department's Consumer Protection Division received 8,277 calls from Spanish-speaking consumers. By 2005, the inquiries had increased to over 13,000 calls.

Audrey Selden, Senior Associate Commissioner of Consumer Protection, has determined there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule for each year of the first five years the proposed amended section is in effect. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Selden has also determined that for each year of the first five years this section is in effect, that the primary public benefit anticipated as a result of the proposed amended section will be less confusion and frustration on the part of first- or third-party claimants who make a claim regarding damage to a motor vehicle. The amended rule will also benefit consumers by enabling the Department to better allocate its resources. By reducing the number of misdirected calls, more calls can be answered and more consumers can be assisted by the Department.

The costs for insurance companies to comply with the amended rule are negligible for two reasons. First, the cost to print the required notice should not increase. The current §5.501 requires the notice be attached to or printed on the reverse side of a copy of the Insurance Code Article 5.07-1. The Spanish notice fits below the English notice on one sheet of paper; therefore, insurers will not incur any additional production costs as a result of compliance with the proposed amendments. Second, an insurer should be able to exhaust its existing stock of notices prior to the effective date of amended §5.501. The Department proposes the revised notice requirements become applicable January 1, 2007. Existing notices printed according to the requirements in current §5.501 may be used through December 31, 2006. New notices can be produced in the regular course of business for use on or before January 1, 2007. Therefore, absent the pressure of immediate compliance insurers will not experience any real economic impact.

The Department does not anticipate that the cost to comply will vary between small, large, or micro-businesses. Although the Department does not anticipate that the proposed amendments will have an adverse effect on small and micro-businesses, the Department has considered the purpose of Article 5.07-1 of the Insurance Code. The statutory provision requires all insurers or insurance adjusters to provide notice to first- or third-party claimants at the time the vehicle is presented in connection with a claim for damage repair; therefore, it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the Department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments because they would not receive adequate notice of their rights as required by the statute.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 24, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Audrey Selden, Senior Associate Commissioner, Consumer Protection, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk by no later than 5:00 p.m. on July 24, 2006. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Insurance Code Article 5.07-1, Article 5.98, and §36.001. Article 5.07-1 specifically charges the Commissioner with adopting rules to establish the method insurers must use to provide claimants with notice of their motor vehicle repair rights. Under Article 5.98, the Commissioner is authorized to adopt reasonable rules appropriate to accomplishing the purposes of Chapter 5 of the Insurance Code. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: §5.501 Insurance Code Article 5.07-1

§5.501. Notice Requirements to Claimants Regarding Motor Vehicle Repairs.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Business day--A day other than a Saturday, Sunday, or holiday recognized by the State of Texas.

(2) Insurer--An insurer or any person authorized to act on behalf of an insurer regarding damage to a vehicle, regardless of whether employed by the insurer.

(b) - (g) (No change.)

(h) The written notice must be printed in at least ten point type with the insurer's name, mailing address, phone number, fax number and e-mail address or web address printed in bold face type and[~~,~~] must be attached to, or printed on the reverse side of, a copy of the Insurance Code, Article 5.07-1. The written notice[~~, and~~] must read as follows: Figure: 28 TAC §5.501(h)

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603139
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. MEDICAL BILLING AND PROCESSING

SUBCHAPTER D. DISPUTE AND AUDIT OF BILLS BY INSURANCE CARRIERS

28 TAC §§133.305, 133.307, 133.308

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance, Division of Workers' Compensation proposes repeal of §§133.305, 133.307, and 133.308, concerning medical dispute resolution (MDR). The repeal of these sections is necessary for the Division to propose new §§133.305, 133.307, and 133.308 published elsewhere in this issue of the *Texas Register*. These new sections are necessary to: implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005; address the merger of two agencies with similar purposes and processes; and improve efficiencies of the MDR process.

The proposed new sections incorporate HB 7 specific changes to the MDR process. The HB 7 changes remove the State Office of Administrative Hearings from the MDR process, authorize pharmacy processing agents to act in behalf of pharmacies under terms and conditions agreed on by the pharmacies, establish the binding effect of independent review organization (IRO) decisions, specify elements of the IRO decision, create workers' compensation health care networks, and institute quality monitoring of IROs. In addition, HB 7 requires the health care provider to refund a carrier for inappropriate charges upon receiving a carrier's request for refund and after opportunity for appeal to the insurance carrier, and establishes that disputes related to carrier refunds are to be pursued by health care providers through MDR.

The proposed new sections govern dispute resolution of workers' compensation medical necessity and medical fee disputes. To accommodate a new dispute resolution framework, these proposed sections implement pertinent portions of HB 7, address the merger of two agencies, and streamline the MDR process. Additionally, the proposed sections incorporate the new processes, which not only simplify the administrative processing for stakeholders, but also allow for a more efficient and consistent method of processing and resolving medical disputes. The proposed sections also clarify that a qualified pharmacy processing agent will be considered a health care provider for purposes of MDR. The new sections apply to medical necessity and fee disputes filed on or after September 1, 2006.

Amy Rich, Director of Medical Disputes, Division of Workers' Compensation, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the repeal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Rich has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repeal in conjunction with the adoption of new §§133.305, 133.307, and 133.308 will be improved organization resulting in greater regulatory efficiency in administering regulations under Chapter 133, Subchapter D. The proposed new sections reflect the 79th Legislature's express intent that medical benefits are to be provided in a timely and cost-effective manner.

There are no anticipated costs to system participants as a result of the proposed repeal. There is no difference in the cost of compliance between a large and small business as a result of the proposed repeal. Based on the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on July 24, 2006. Comments may be submitted via the Internet through the Department's Internet website at http://www.tdi.state.tx.us/wc/proposedrules/toc.html or by mailing or delivering your comments to Kristi Dowding, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The Division will consider the adoption of the proposal in public hearing scheduled for July 26, 2006 in the Tippy Foster Room, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas.

The repeal is proposed under Labor Code §§408.027(g), 408.0271, 408.031, 413.002, 413.020, 413.031, 413.032, 401.024, 402.00111, and 402.061. Labor Code §408.027(g) provides that §408.027 and §408.0271 apply to health care provided through a workers' compensation health care network established under Chapter 1305 and that the commissioner of workers' compensation shall adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 408.0271 states that if health care services provided to an employee are determined by the carrier to be inappropriate, the carrier shall notify the provider in writing of the carrier's decision and demand a refund of the portion of payment on the claim received by the provider for the inappropriate services and the provider may appeal such a carrier's determination no later than the 45th day after the date of the carrier's request for the refund. Section 408.031(a) allows injured employees to receive benefits under a workers' compensation health care network established under Insurance Code Chapter 1305. Section 413.002(d) provides that if the commissioner determines that an IRO is in violation of Labor Code Chapter 413, rules adopted by the commissioner under Chapter 413, applicable provisions of Labor Code Title 5, the commissioner or a delegated representative shall notify the IRO of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred. Section 413.020 provides the authority to adopt rules which enable the Division to charge a carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges. The section also provides that the Division may charge a provider who exceeds a fee or utilization guideline or a carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline a reasonable fee for review of health care treatment, fees, or charges. Section 413.031 specifies the processes for an IRO decision and appeal and states that the commissioner by rule shall specify the appropriate dispute resolution process for fee disputes in which a claimant has paid for medical services and seeks reimbursement. Section 413.032(a) provides that an IRO that conducts a review under Chapter 413 shall specify the minimum elements on which the IRO decision is based. Section 401.024 authorizes the commissioner to require by rule the use of facsimile or other electronic means to transmit information. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal:

Labor Code §§401.024, 402.00111, 402.083, 408.0041, 408.027, 408.0271, 408.031, 413.002, 413.0111, 413.020, 413.031, 413.032, 413.0511, and 413.0512

§133.305. Medical Dispute Resolution--General.

§133.307. Medical Dispute Resolution of a Medical Fee Dispute.

§133.308. Medical Dispute Resolution by Independent Review Organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603182
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 804-4288

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §§133.305, 133.307, 133.308

The Texas Department of Insurance, Division of Workers' Compensation proposes new §§133.305, 133.307, and 133.308, concerning medical dispute resolution (MDR). These proposed sections are necessary to: implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005; address the merger of two agencies with similar purposes and processes; and improve efficiencies of the MDR process. The Division also proposes the simultaneous repeal of existing §§133.305, 133.307, and 133.308, published elsewhere in this issue of the *Texas Register*.

The proposed sections incorporate HB 7 specific changes to the MDR process. The HB 7 changes remove the State Office of Administrative Hearings from the MDR process, authorize pharmacy processing agents to act on behalf of pharmacies under terms and conditions agreed on by the pharmacies, establish the binding effect of independent review organization (IRO) decisions, specify elements of the IRO decision, create workers' compensation health care networks, and institute quality monitoring of IROs. In addition, HB 7 requires the health care provider to refund a carrier for inappropriate charges upon receiving a carrier's request for refund and opportunity for appeal to the insurance carrier, and establishes that disputes related to carrier refunds are to be pursued by health care providers through MDR.

The overall aim of HB 7, as provided in Labor Code §402.021(b)(3) - (5), is to provide medical benefits in a timely and cost-effective manner. The goal also includes the provision of appropriate, high-quality medical care which supports restoration of the injured employee's (employee) physical condition and earning capacity. Additionally, the goal is to minimize the likelihood of disputes, while maximizing the prompt and fair resolution of identified disputes. In conjunction with these goals, HB 7 established certified workers' compensation health care networks (networks) which offer employers a cost-effective means of delivering medical benefits to employees.

Another significant HB 7 change is the creation of the Division of Workers' Compensation (Division) within the Texas Department of Insurance. The former Texas Workers' Compensation Commission functions were merged within the Texas Department of Insurance to form the new Division. In conjunction with the merger, several cross-agency work groups were created to examine functions shared by the two agencies and identify opportunities for ensuring consistency and efficient operations.

This cross-agency examination included a review and revision of the MDR rules and functions. The examination identified that health care providers (providers) are required to follow different processes to resolve medical necessity disputes for network and non-network claims. In addition, insurance carriers (carriers) with network contracts are required to follow different business processes and use different automated systems to support both network and non-network claims. These processes require the use of specialized forms, the submission of paperwork to separate entities, and IRO assignment by separate divisions of the Department. This duplication of function is expensive and time-consuming.

As a result of the examination, the proposal consolidates the IRO processes to reduce costs and save time. This consolidation is in accordance with Labor Code §413.031 and Insurance Code §1305.355, which both require medical necessity disputes to be conducted by an IRO pursuant to Insurance Code Article 21.58C. Therefore, the proposed rules create a single process for submitting and processing network and non-network requests for IRO review within the Health and Workers' Compensation Network Certification and Quality Assurance Division (HWCN Division) of the Department.

In reviewing the medical necessity dispute processes, the Department considered concerns expressed by stakeholders. Stakeholders were concerned that the current medical fee dispute resolution process was too time-consuming and administratively complex. The Department is aware that historically, a significant percentage of requests for fee dispute resolution involved more than solely fee issues. Issues of compensability, extent of injury or relatedness and/or medical necessity often exist in addition to the fee dispute, which has significantly complicated and slowed the resolution process. The Department identified additional areas of complexity within the process that result in delays in resolving a medical fee dispute. These areas include the proper identification of denial issues and the number of steps in the resolution process.

In the review, the Department also determined that the Division has the authority to resolve disputes related to out-of-network care for which a contracted rate is not established based upon Insurance Code §1305.153. This provision establishes that reimbursement for authorized out-of-network care shall be in accordance with the Labor Code and applicable rules.

The proposed sections govern dispute resolution of workers' compensation medical necessity and medical fee disputes. To accommodate a new dispute resolution framework, these proposed sections implement pertinent portions of HB 7, address the merger of two agencies, and streamline the MDR process. Additionally, the proposed sections incorporate the new processes, which not only simplify the administrative processing for stakeholders, but also allow for a more efficient and consistent method of processing and resolving medical disputes. The proposed sections also clarify that a qualified pharmacy processing agent will be considered a health care provider for purposes

of MDR. The new sections apply to medical necessity and fee disputes filed on or after September 1, 2006.

Proposed §133.305 outlines the general requirements of the MDR process. The proposed section defines terms relevant to MDR, including network and non-network health care. The proposed section uses "preauthorization or concurrent" for consistency with the use of those terms in Insurance Code Article 21.58A and related rules. The proposed section sets forth the dispute sequence for resolving medical dispute issues, and requires all issues of compensability, extent of injury and/or medical necessity to be resolved before a fee dispute can be processed. The proposed section also establishes circumstances in which the Division may assess administrative fees and sets out requirements for redacting confidential information.

Proposed §133.307 establishes the new MDR process for resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury. This proposed section applies to authorized out-of-network care not subject to a fee contract, as well as non-network care. The request for medical fee dispute resolution shall be filed not later than one year after the date of service in dispute, unless issues of compensability, extent of injury and/or medical necessity exist. Proposed §133.307 allows a requestor access to MDR to resolve a fee dispute for which compensability, extent of injury and/or medical necessity and compensability has been determined through dispute resolution regardless of the date of service, if the submission of the request for MDR is within 60 days of the final determination.

Proposed §133.307 outlines the following three steps for resolving fee disputes. First, the requestor is required to present all information necessary to resolve the dispute upon the initial request for dispute resolution. The Division will notify the respondent of the dispute by providing a copy of all the information submitted by the requestor. Second, in response to the dispute, the proposed section requires the respondent, most often the carrier, to provide all information required by this section, including any missing explanation of benefits that may identify outstanding compensability, extent of injury, medical necessity, or fee issues. If compensability, extent of injury and/or medical necessity issues are identified, the fee dispute request will be abated until the issue is resolved. Third, the proposed section provides that the Division may request additional information from the disputing parties and may raise new issues in the MDR process. The proposed section also sets forth the reasons that justify dismissing a request for dispute resolution.

The proposed section provides that aggrieved parties who disagree with the decision may seek judicial review. The proposed section outlines the appropriate appeal process for parties to MDR seeking judicial review of the IRO's decision, the process for preparing a record for appeal of an MDR decision, and the contents of the record. The proposed section also explains the Division's assessment of expenses for preparing the record.

Proposed §133.308 provides the process for the review of network and non-network preauthorization, concurrent or retrospective medical necessity disputes. The proposed section specifies who can be a requestor, the manner in which requests must be made, and the time requirements that govern requests. The proposed section also states the process for IRO assignment and carrier document submission. The proposed section establishes IRO fees and corresponding time limits for payment along with the consequences of case dismissal in the event of non-compliance with the section. Further, the proposed section addresses the process for an IRO to request a designated doctor exam. The proposed time frames for IRO decisions are set forth, as well as what the IRO decision must include. The proposed section provides that the IRO is responsible for determining the prevailing party and compiling the appellate record in the case of judicial review. The process of appealing IRO decisions is outlined in the proposed section. IRO decisions are not agency decisions, and the Department and the Division are not parties to any such appeals. Both network and non-network appeals processes are detailed, as well as those for appeals of non-network spinal surgery. The section also addresses who will pay the costs for the appeal.

Amy Rich, Director of Medical Disputes, Division of Workers' Compensation, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the rules. There will be no measurable effect on local employment or the local economy as a result of the proposal.

The new rules continue the assessment of administrative fees by the Division when a carrier or provider does not comply with a provision of the Insurance Code, Labor Code, or related rules. The new rules, like the current rules, do not assess an administrative fee to the injured employee. The administrative fee of $50.00 per hour is assessed only when there is a violation of the applicable Code or rules. For fiscal year 2005, the Division assessed an administrative fee of $50.00 per hour for approximately 2,634 hours. It is anticipated that a similar number of hours on an fiscal year basis will incur this administrative fee when the rule becomes effective.

Ms. Rich has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the administration and enforcement of the proposed sections will be improved organization resulting in greater regulatory efficiency in administering regulations under Chapter 133, Subchapter D. The proposed sections reflect the 79th Legislature's express intent that medical benefits are to be provided in a timely and cost-effective manner.

It is anticipated that costs will be incurred by the disputing parties whether requesting or responding to medical dispute resolution. The new rule requires the requestor, typically the provider, to submit two complete sets of all documents related to the medical fee dispute upon the initial request for MDR. The average number of pages per dispute is approximately 60 pages for the two complete sets. The number of pages varies depending on the amount and complexity of the issues in dispute. The new rules require the respondent, typically a carrier, to submit approximately 25 - 30 pages of documents. The Division estimates the cost of copying to be approximately 10 - 30 cents per page. The Division's estimate was based on an estimate provided by an IRO and the Division's published administrative fee schedule.

In addition to cost of copies, the anticipated costs also include staff time and mail service. According to the United States Postal Service, the mail cost associated with a delivery of a small parcel is estimated at 39 cents per pound. The Division estimates that requests and responses vary between 1 - 8 pounds. According to the most recent compensation summary of the Texas Workforce Commission, the average hourly wage for an insurance claims processing clerk is $15.68. The Division estimates that the staff time involved in requesting and responding to MDR is between 1 - 4 hours. Disputing parties currently experience administrative costs in a multi-step process which takes more time than the proposed process. The Department anticipates a

slight decrease in administrative costs to disputing parties because the new rules reduce the number of responses required in the process.

The probable economic cost to a party to obtain the record in the event of an appeal as specified in §133.307(f) and §133.308(r) will vary depending on the size of the record, as well as the charge per copy. The Department estimates the cost of copying to be approximately 10 - 30 cents per page, which would result in a total cost of $20.00 - $60.00 for a 200 page record.

In an effort to ensure that requestors have exhausted other avenues and will follow through once a request is made, requestors who withdraw their request for an IRO decision will be assessed fees. These fees are necessary to reimburse IROs for the costs they incur when they receive an assignment by the Department and perform various administrative procedures to assign the review to a provider. The Division anticipates that the fees will deter unnecessary IRO withdrawals. Therefore, requestors who withdraw their request for an IRO decision after the IRO has been assigned and before the IRO sends the case to a reviewer will be liable for a $150 fee payable to the IRO. Requestors who withdraw a request for an IRO decision after IRO assignment of a reviewer will be liable for the entire IRO fee. If the IRO fee is a tier two fee, the amount will be $460. If the IRO fee is a tier one fee, the amount will be $650.

Any additional economic costs currently exist under existing rules or result from the implementation of pertinent portions of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference between the cost of compliance for large and small businesses as a result of the proposed sections. Based on the cost of labor per hour, there is no disproportionate economic impact on small or micro business. Even if the proposed sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the requirements of the sections for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on July 24, 2006. Comments may be submitted via the Internet through the Department's Internet website at http://www.tdi.state.tx.us/wc/proposedrules/toc.html or by mailing or delivering your comments to Kristi Dowding, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The Division will consider the adoption of the proposal in public hearing scheduled for July 26, 2006 in the Tippy Foster Room, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas.

The new sections are proposed under Labor Code §§408.027(g), 408.0271, 408.031, 413.002, 413.0111, 413.020, 413.031, 413.032, 401.024, 402.00111, 402.083 and 402.061; Insurance Code Article 21.58A, §14(c); and Government Code §2001.177. Labor Code §408.027(g) provides that §408.027 and §408.0271 apply to health care provided through a workers' compensation health care network established under Chapter 1305 and that the commissioner of workers' compensation shall adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 408.0271 states that if health care services provided to an employee are determined by the carrier to be inappropriate, the carrier shall notify the provider in writing of the carrier's decision and demand a refund of the portion of payment on the claim received by the provider for the inappropriate services and the provider may appeal such a carrier's determination no later than the 45th day after the date of the carrier's request for the refund. Section 408.031(a) allows injured employees to receive benefits under a workers' compensation health care network established under Insurance Code Chapter 1305. Section 413.002(d) provides that if the commissioner determines that an IRO is in violation of Labor Code Chapter 413, rules adopted by the commissioner under Chapter 413, applicable provisions of Labor Code Title 5, the commissioner or a delegated representative shall notify the IRO of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred. Section 413.0111 provides that the rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on behalf of the pharmacies under terms and conditions agreed upon by the pharmacies. Section 413.020 provides the authority to adopt rules which enable the Division to charge a carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges. The section also provides that the Division may charge a provider who exceeds a fee or utilization guideline or a carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline a reasonable fee for review of health care treatment, fees, or charges. Section 413.031 specifies the processes for an IRO decision and appeal and states that the commissioner by rule shall specify the appropriate dispute resolution process for fee disputes in which a claimant has paid for medical services and seeks reimbursement. Section 413.032(a) provides that an IRO that conducts a review under Chapter 413 shall specify the minimum elements on which the IRO decision is based. Section 401.024 authorizes the commissioner to require by rule the use of facsimile or other electronic means to transmit information. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.083 provides that information in or derived from a claim file regarding an employee is confidential. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Insurance Code Article 21.58A, §14(c), grants the commissioner of workers' compensation the authority to adopt rules as necessary to implement Article 21.58A, as that Article applies to utilization review of health care services provided to persons eligible for workers' compensation medical benefits under Labor Code Title 5. Government Code §2001.177(a) provides that a state agency by rule may require a party who appeals a final decision in a contested case to pay all or a part of the cost of preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

The following sections are affected by this proposal:

Insurance Code, Article 21.58A, 21.58C, and Chapter 1305, Subchapter H, and Labor Code §§401.024, 402.00111, 402.083, 408.0041, 408.027, 408.0271, 408.031, 413.002, 413.0111, 413.020, 413.031, 413.032, 413.0511, and 413.0512

§133.305. Medical Dispute Resolution--General.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Medical dispute resolution (MDR)--A process for resolution of one or more of the following disputes:

(A) a medical fee dispute; or

(B) a medical necessity dispute, which may be:

(i) a preauthorization or concurrent medical necessity dispute; or

(ii) a retrospective medical necessity dispute.

(2) Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee (employee) that has been determined to be medically necessary and appropriate for treatment of that employee's compensable injury. The dispute is resolved by the Division pursuant to Division rules, including §133.307 of this subchapter (relating to Medical Dispute Resolution of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider (provider), which includes qualified pharmacy processing agents as described in Labor Code §413.0111, dispute of an insurance carrier (carrier) reduction or denial of a medical bill;

(B) an employee dispute of a carrier reduction or denial of a refund request for health care charges paid by the employee; and

(C) a provider dispute regarding the results of a Division audit or review which requires the provider to refund an amount for health care services previously paid by the carrier.

(3) Network health care--Health care delivered by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules.

(4) Non-network health care--Health care not delivered by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules.

(5) Preauthorization or concurrent medical necessity disputes--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this subchapter (relating to Medical Dispute Resolution by Independent Review Organizations).

(6) Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this subchapter.

(b) Dispute Sequence. If there is a retrospective medical necessity dispute for the same services for which there are also medical fee issues, the requestor shall file a request for medical fee dispute resolution with the Division only after the receipt of an IRO decision, inclusive of all appeals, which resolves the medical necessity issue. The medical necessity dispute must be resolved pursuant to §133.308 of this subchapter prior to the submission of the medical fee dispute pursuant to §133.307 of this subchapter.

(c) Division Administrative Fee. The Division may assess a fee, as published on the Division's website, in accordance with Labor Code §413.020 when resolving disputes pursuant to §133.307 and §133.308 of this subchapter if the decision indicates the following:

(1) the provider billed an amount in conflict with Division rules, including billing rules, fee guidelines or treatment guidelines;

(2) the carrier denied or reduced payment in conflict with Division rules, including reimbursement or audit rules, fee guidelines or treatment guidelines;

(3) the carrier has reduced the payment based on a contracted discount rate with the provider but has not made the contract available upon the Division's request;

(4) the carrier has reduced or denied payment indicating a contracted discount rate with the provider and has provided a contract that indicates the direction or management of health care through a provider arrangement that has not been certified as a workers' compensation network; or

(5) the carrier or provider did not comply with a provision of the Insurance Code, Labor Code or related rules.

(d) Confidentiality. Any documentation exchanged by the parties during MDR that contains confidential information regarding a person other than the employee for that claim or a party in the dispute must be redacted by the party submitting the documentation to remove any information that identifies the person.

§133.307. Medical Dispute Resolution of Fee Disputes.

(a) Applicability. This section applies to a request for medical fee dispute resolution for non-network or certain authorized out-of-network health care not subject to a contract, which was filed on or after September 1, 2006. Dispute resolution requests filed prior to September 1, 2006 shall be resolved in accordance with the rules in effect at the time the request was filed. In resolving non-network disputes which are over the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the Division of Workers' Compensation (Division) is to adjudicate the payment, given the relevant statutory provisions and Division rules.

(b) Requestors. The following parties may be requestors in medical fee disputes:

(1) the health care provider (provider), including qualified pharmacy processing agents as described in Labor Code §413.0111, in a dispute over the reimbursement of a medical bill(s);

(2) the provider in a dispute about the results of a Division audit or review which requires the provider to refund an amount for health care services previously paid by the insurance carrier;

(3) the injured employee (employee) in a dispute involving an employee's request for reimbursement from the carrier of medical expenses paid by the employee; or

(4) the employee when requesting a refund of the amount the employee paid to the provider in excess of a Division fee guideline.

(c) Requests. Requests for medical dispute resolution (MDR) shall be filed in the form and manner prescribed by the Division. Requestors shall file two legible copies of the request with the Division.

(1) Timeliness. A requestor shall timely file with the Division's MDR Section or waive the right to MDR. The Division shall deem a request to be filed on the date the MDR Section receives the request. A request for medical fee dispute resolution shall be filed not later than one year after the date(s) of service in dispute, except in the following circumstances:

(A) if a dispute under Labor Code Chapter 410 has been filed related to the health care that is the subject of the dispute, the medical dispute must be filed not later than 60 days after the date the

requestor received the final decision on compensability or extent of injury, inclusive of all appeals, involving health care for conditions determined to be compensable;

(B) if a medical dispute regarding medical necessity has been filed, the medical dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the carrier previously denied payment based on medical necessity; or

(C) if the dispute relates to a refund notice issued pursuant to a Division audit or review, the dispute must be filed not later than 20 days after the date of the receipt of a refund notice.

(2) Provider Request. The provider shall complete the required sections of the request in the form and manner prescribed by the Division. The provider shall file the request with the MDR Section by any mail service or personal delivery. The request shall include:

(A) a copy of all medical bill(s) as originally submitted to the carrier and a copy of all medical bill(s) submitted to the carrier for reconsideration in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills);

(B) a copy of each explanation of benefits (EOB) relevant to the fee dispute or, if no EOB was received, convincing documentation providing evidence of carrier receipt of the request for an EOB;

(C) the form DWC-60 table listing the specific disputed health care and charges in the form and manner prescribed by the Division;

(D) when applicable, a copy of the final decision regarding compensability, extent of injury, and/or medical necessity for the health care related to the dispute;

(E) a copy of all medical records specific to the dates of service in dispute;

(F) a position statement of the disputed issue(s) that shall include:

(i) a description of the health care for which payment is in dispute,

(ii) the requestor's reasoning for why the disputed fees should be paid or refunded,

(iii) how the Labor Code, Division rules, and fee guidelines impact the disputed fee issues, and

(iv) how the submitted documentation supports the requestor position for each disputed fee issue;

(G) documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) when the dispute involves health care for which the Division has not established a maximum allowable reimbursement (MAR), as applicable; and

(H) if the requestor is a pharmacy processing agent, a signed and dated copy of an agreement between the processing agent and the pharmacy clearly demonstrating the dates of service covered by the contract and a clear assignment of the pharmacy's right to participate in the MDR process. The pharmacy processing agent may redact any proprietary information contained within the agreement.

(3) Employee Refund Dispute Request. An employee who has paid for health care may request medical fee dispute resolution of a refund denied by the provider. The employee's refund request shall be sent to the MDR Section by mail service, personal delivery or facsimile and shall include:

(A) the form DWC-60 table listing the specific disputed health care in the form and manner prescribed by the Division;

(B) an explanation of the disputed amount that includes a description of the health care, why the disputed amount should be refunded, and how the submitted documentation supports the explanation for each disputed amount;

(C) proof of employee payment (copies of receipts);

(D) a copy of the carrier's denial of reimbursement relevant to the dispute, or, if no denial was received, convincing evidence of the employee's attempt to obtain reimbursement from the carrier;

(4) Division Response to Request. The Division will forward a copy of the request to the respondent. The respondent shall be deemed to have received the request on the acknowledgement date as defined in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission).

(d) Responses. Carrier or provider responses to request MDR shall be legible and submitted in the form and manner prescribed by the Division.

(1) Timeliness. The response will be deemed timely if received by the Division via mail service, personal delivery, or facsimile within 14 days after the date the respondent received the copy of the requestor's dispute. If the Division does not receive the response information within 14 days of the dispute notification, then the Division may base its decision on the available information.

(2) Carrier Response. Upon receipt of the request, the carrier shall complete the required sections of the request form and provide any missing information not provided by the requestor and known to the carrier.

(A) The response to the request shall include the completed request form and:

(i) all initial and reconsideration EOBs related to the health care in dispute not submitted by the requestor or a statement certifying that the carrier did not receive the provider's disputed billing prior to the dispute request;

(ii) a copy of all medical bill(s) relevant to the dispute, if different from that originally submitted to the carrier for reimbursement;

(iii) a copy of any pertinent medical records or other documents relevant to the fee dispute;

(iv) a statement of the disputed fee issue(s), which includes:

(I) a description of the health care in dispute;

(II) a position statement of reasons why the disputed medical fees should not be paid;

(III) a discussion of how the Labor Code and Division rules, including fee guidelines, impact the disputed fee issues; and

(IV) a discussion regarding how the submitted documentation supports the respondent's position for each disputed fee issue; and

(V) documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable

reimbursement in accordance with Labor Code §413.011 and §134.1 of this title if the dispute involves health care for which the Division has not established a MAR, as applicable.

(B) The response shall address only those denial reasons presented to the requestor prior to the date the request for MDR was filed with the Division and the other party. Responses shall not address new or additional denial reasons or defenses after the filing of a request. Any new denial reasons or defenses raised shall not be considered in the review.

(C) If the carrier did not receive the provider's disputed billing or the employee's reimbursement request relevant to the dispute prior to the request, the carrier shall so certify when the carrier files the request form with the Division.

(D) If the dispute has not been resolved and involves compensability or extent of injury the carrier shall attach a copy of any related Plain Language Notice 11 (PLN 11) in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(3) Provider Response. Upon receipt of the request, the provider shall complete the required sections of the request form and provide any missing information not provided by the requestor and known to the provider. The response shall include:

(A) any documentation, including medical bills and employee payment receipts, supporting the reasons why the refund request was denied;

(B) a statement of the disputed fee issue(s), which includes a discussion regarding how the submitted documentation supports the provider's position for each disputed fee issue; and

(C) a copy of the provider's refund payment, if applicable.

(e) MDR Action. The Division will review the completed request and response to determine appropriate MDR action.

(1) Request for Additional Information. The Division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the Division no later than 14 days after receipt of this request. If the Division does not receive the requested additional information within 14 days after receipt of the request, then the Division may base its decision on the information available.

(2) Abatement of Dispute. If the carrier has raised a dispute pertaining to compensability, or extent of injury for the claim, in accordance with §124.2 of this title, the request for medical fee dispute resolution will be held in abatement until those disputes have been resolved by a final decision of the Division, inclusive of all appeals, or receipt of written notice from the carrier.

(3) Issues Raised by the Division. The Division may raise issues in the MDR process when it determines such an action to be appropriate to administer the dispute process consistent with the provisions of the Labor Code and Division rules.

(4) Dismissal. The Division may dismiss a request for medical fee dispute resolution if:

(A) the requestor informs the Division, or the Division otherwise determines, that the dispute no longer exists;

(B) the requestor is not a proper party to the dispute pursuant to subsection (b) of this section;

(C) the Division determines that the medical bills in the dispute have not been submitted to the carrier for reconsideration;

(D) the fee disputes for the date(s) of health care in question have been previously adjudicated by the Division;

(E) the request for medical fee dispute resolution is untimely;

(F) the Division determines the medical fee dispute is for health care services provided to an employee by a network provider subject to Insurance Code Chapter 1305; or

(G) if the request contains unresolved medical necessity issues, the Division shall notify the parties of the review requirements pursuant to §133.308 of this subchapter (relating to Medical Dispute Resolution by Independent Review Organizations) and will dismiss the request in accordance with the process outlined in §133.305 of this subchapter (relating to Medical Dispute Resolution--General).

(H) the request for medical fee dispute resolution involves contract rates not pertaining to networks certified under Insurance Code Chapter 1305 and not in accordance with Labor Code §413.011 or §504.053;

(I) the request for medical fee dispute resolution was not submitted in compliance with the provisions of the Labor Code and this chapter; or

(J) the Division determines that good cause exists to dismiss the request.

(5) Decision. The Division shall send a decision to the disputing parties and post the decision on the Department Internet website.

(6) Division Fee. The Division may assess a fee in accordance with §133.305 of this subchapter.

(f) Appeal. A party to a medical fee dispute may seek judicial review of the decision by filing a petition in a Travis County district court not later than the 30th day after the date on which the decision is received by the appealing party. The parties will be deemed to have received the decision on the acknowledgement date as defined in §102.5 of this title. Any decision that is not timely appealed becomes final. If a party to a medical fee dispute files a petition for judicial review of the MDR Section decision, the party shall, at the time the petition is filed with the district court, send a copy of the petition for judicial review to the Division. The following information must be included in the petition or provided by cover letter:

(1) the MDR Section tracking number for the dispute being appealed;

(2) the names of the parties;

(3) the cause number;

(4) the identity of the court; and

(5) the date the petition was filed with the court.

(g) Record for Appeal. The Division shall upon receipt of the court petition prepare a record of the MDR Section review and submit a copy of the record to the district court. The Division shall assess the party seeking judicial review expenses incurred by the Division in preparing and copying the record. The record shall contain:

(1) the MDR Section decision;

(2) the request for MDR;

(3) all documentation and written information submitted by the requestor;

(4) all documentation and written information submitted by the respondent;

(5) other documents contained in the MDR Section files (e.g. correspondence, orders for production;

(6) copies of any pertinent medical literature or other documentation utilized to support the decision or, where such documentation is subject to copyright protection or is voluminous, then a listing of such documentation referencing the portion(s) of each document utilized;

(7) if not specified in the decision, citations to the particular provisions in statutes, rules, and other authorities that are utilized to support the decision; and

(8) signed and certified custodian of records affidavit;

(h) Letter of Clerical Correction. Upon receipt of a Division decision, either party may request a clerical correction of an error in a decision. Clerical errors are non-substantive and include but are not limited to typographical or mathematical calculation errors. Only the Division can determine if a clerical correction is required. A request for clerical correction does not alter the deadlines for appeal.

§133.308. Medical Dispute Resolution by Independent Review Organizations.

(a) Applicability. This section applies to the independent review of network and non-network preauthorization, concurrent or retrospective medical necessity disputes for a dispute resolution request filed on or after September 1, 2006. Dispute resolution requests filed prior to September 1, 2006 shall be resolved in accordance with the rules in effect at the time the request was filed. When applicable, retrospective medical necessity disputes shall be governed by the provisions of §133.309 of this chapter (relating to Alternative Medical Necessity Dispute Resolution by Case Review Doctor). All independent review organizations (IROs) performing reviews of health care under the Labor Code and Insurance Code, regardless of where the independent review activities are located, shall comply with this section. The Insurance Code, the Labor Code and related rules govern the independent review process.

(b) IRO Certification. Each IRO performing independent review of health care provided in the workers' compensation system shall be certified pursuant to Insurance Code Article 21.58C.

(c) Conflicts. Conflicts of interest will be reviewed by the Department consistent with the provisions of the Insurance Code Article 21.58C, §2(f), Labor Code §413.032(b), §12.203 of this title (relating to Conflicts of Interest Prohibited) and any other related rules. Notification of each IRO decision must include a certification by the IRO that the reviewing provider has certified that no known conflicts of interest exist between that provider, the employee, any of the treating providers, or any of the providers who reviewed the case for determination prior to referral to the IRO.

(d) Monitoring. The Division will monitor IROs under Labor Code §§413.002, 413.0511, and 413.0512. The Division shall report the results of the monitoring of IROs to the Department on at least a quarterly basis.

(e) Requestors. The following parties are considered requestors in preauthorization, concurrent and retrospective medical necessity dispute resolution:

(1) providers, including qualified pharmacy processing agents acting on behalf of a pharmacy as described in Labor Code §413.0111;

(2) employees covered by a network; and

(3) employees not covered by a network, excluding retrospective medical necessity disputes, except when reimbursement was denied for health care paid by the employee.

(f) Requests. A request for independent review must be filed in the form and manner prescribed by the Department. The Department's IRO request form may be obtained from:

(1) the Department's Internet website at www.tdi.state.tx.us; or

(2) the Health and Worker's Compensation Network Certification and Quality Assurance Division, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(g) Timeliness. A requestor shall file a request for independent review with the insurance carrier (carrier) or the carrier's utilization review agent (URA) no later than the 45th day after the denial of reconsideration. The carrier shall immediately notify the Department upon receipt of the request for an independent review. In a preauthorization or concurrent review dispute request, an employee with a life-threatening condition, as defined in Insurance Code Article 21.58A, is entitled to an immediate review by an IRO and is not required to comply with the procedures for a reconsideration.

(h) Dismissal. The Department may dismiss a request for medical necessity dispute resolution if:

(1) the requestor informs the Department, or the Department otherwise determines, that the dispute no longer exists;

(2) the individual or entity requesting medical necessity dispute resolution is not a proper party to the dispute;

(3) the Department determines that the dispute has not been submitted to the carrier for reconsideration;

(4) the Department has previously resolved the dispute for the date(s) of health care in question;

(5) the request for dispute resolution is untimely pursuant to subsection (g) of this section;

(6) the request for medical necessity dispute resolution was not submitted in compliance with the provisions of this subchapter; or

(7) the Department determines that good cause otherwise exists to dismiss the request.

(i) IRO Assignment and Notification. The Department shall review the request for IRO review, assign an IRO, and notify the parties about the IRO assignment consistent with the provisions of Insurance Code Article 21.58C, §2(a)(1)(A), §1305.355(a), Chapter 12, Subchapter F of this title (related to Random Assignment of Independent Review Organizations), any other related rules and this subchapter.

(j) Carrier Document Submission. The carrier or the carrier's URA shall submit the documentation required in paragraphs (1) - (6) of this subsection to the IRO not later than the third working day after the date the carrier receives the notice of IRO assignment. The documentation shall include:

(1) the forms prescribed by the Department for requesting IRO review;

(2) all medical records of the employee in the possession of the carrier that are relevant to the review;

(3) all documents, guidelines, policies, protocols and criteria used by the carrier in making the decision;

(4) all documentation and written information submitted to the carrier in support of the appeal;

(5) the written notification of the initial adverse determination and the written adverse determination of the reconsideration; and

(6) any other information required by the Department related to a request from a carrier for the assignment of an IRO.

(k) Additional Information. The IRO shall request additional necessary information from either party or from other providers whose records are relevant to the review.

(1) The party shall deliver the requested information to the IRO as directed by the IRO. If the provider requested to submit records is not a party to the dispute, the carrier shall reimburse copy expenses for the requested records pursuant to §134.120 of this title (relating to Reimbursement for Medical Documentation). Parties to the dispute may not be reimbursed for copies of records sent to the IRO.

(2) If the required documentation has not been received as requested by the IRO, the IRO shall notify the Department and the Department shall request the necessary documentation.

(3) Failure to provide the requested documentation as directed by the IRO or Department may result in enforcement action as authorized by statutes and rules.

(l) Designated Doctor Exam. In performing a review of medical necessity, an IRO may request that the Division require an examination by a designated doctor and direct the employee to attend the examination pursuant to Labor Code §413.031(g) and §408.0041. The IRO request to the Division must be made no later than 10 days after the IRO receives notification of assignment of the IRO. The treating doctor and carrier shall forward a copy of all medical records, diagnostic reports, films, and other medical documents to the designated doctor appointed by the Division, to arrive no later than three working days prior to the scheduled examination. Communication with the designated doctor is prohibited regarding issues not related to the medical necessity dispute. The designated doctor shall complete a report and file it with the IRO, on the form and in the manner prescribed by the Division no later than seven working days after completing the examination. The designated doctor report shall address all issues as directed by the Division.

(m) Time Frame for IRO Decision. The IRO will render a decision as follows:

(1) for life-threatening conditions, no later than eight days after the IRO receipt of the dispute;

(2) for preauthorization and concurrent medical necessity disputes, no later than the 20th day after the IRO receipt of the dispute;

(3) for retrospective medical necessity disputes, no later than the 30th day after the IRO receipt of the IRO fee; and

(4) if a designated doctor examination has been requested by the IRO, the above time frames begin on the date of the IRO receipt of the designated doctor report.

(n) IRO Decision. The decision shall be mailed or otherwise transmitted to the parties and transmitted by facsimile to the Department within the time frames specified in this section.

(1) The IRO decision must include:

(A) a list of all medical records and other documents reviewed by the IRO, including the dates of those documents;

(B) a description and the source of the screening criteria or clinical basis used in making the decision;

(C) an analysis of, and explanation for, the decision, including the findings and conclusions used to support the decision;

(D) a description of the qualifications of each physician or other health care provider who reviewed the decision;

(E) a statement that clearly states whether or not medical necessity exists for each of the health care services in dispute;

(F) a certification by the IRO that the reviewing provider has no known conflicts of interest pursuant to the Insurance Code Article 21.58A, Labor Code §413.032, and §12.203 of this title; and

(G) if the IRO's decision is contrary to:

(i) the Division's policies or guidelines adopted under Labor Code §413.011, the IRO must indicate in the decision the specific basis for its divergence in the review of medical necessity of non-network health care; or

(ii) the network's treatment guidelines, the IRO must indicate in the decision the specific basis for its divergence in the review of medical necessity of network health care.

(2) The notification to the Department shall also include certification of the date and means by which the decision was sent to the parties.

(o) Carrier Use of IRO Decision. If an IRO decision determines that medical necessity exists for health care that the carrier denied and the carrier utilized a peer review report on which to base its denial, the peer review report shall not be used for subsequent medical necessity denials of the same claim.

(p) IRO Fees. IRO fees will be paid in the same amounts as the IRO fees set by Department rules. In addition to the specialty classifications established as tier two fee in Department rules, independent review by a doctor of chiropractic shall be paid the tier two fee. IRO fees shall be paid as follows:

(1) In network disputes, a preauthorization, concurrent, or retrospective medical necessity dispute for health care provided by a network, the carrier must remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO;

(2) In non-network disputes, IRO fees for disputes regarding non-network health care must be paid as follows:

(A) in a preauthorization or concurrent review medical necessity dispute or an employee reimbursement dispute, the carrier shall remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO.

(B) in a retrospective medical necessity dispute, the requestor must remit payment to the assigned IRO within 15 days after receipt of an invoice from the IRO.

(i) if the IRO fee has not been received within 15 days of the requestor's receipt of the invoice, the IRO shall notify the Department and the Department shall dismiss the dispute with prejudice.

(ii) after an IRO decision is rendered, the IRO fee must be paid or refunded by the nonprevailing party as determined by the IRO in its decision.

(3) Designated doctor examinations requested by an IRO shall be paid by the carrier in accordance with the medical fee guidelines under the Labor Code and related rules.

(4) Failure to pay or refund the IRO fee may result in enforcement action as authorized by statute and rules and removal from the Division's Approved Doctor List.

(5) For health care not provided by a network, the non-prevailing party to a retrospective medical necessity dispute must pay or refund the IRO fee to the prevailing party upon receipt of the IRO decision, but not later than 15 days regardless of whether an appeal of the IRO decision has been or will be filed.

(6) The IRO fees may include an amended notification of decision if the Department determines the notification to be incomplete. The amended notification of decision shall be filed with the Department no later than five working days from the IRO's receipt of such notice from the Department. The amended notification of decision does not alter the deadlines for appeal.

(7) If a requestor withdraws the request for an IRO decision after the IRO has been assigned by the Department but before the IRO sends the case to an IRO reviewer, the requestor shall pay the IRO a withdrawal fee of $150 within 30 days of the withdrawal. If a requestor withdraws the request for an IRO decision after the case is sent to a reviewer, the requestor shall pay the IRO the full IRO review fee within 30 days of the withdrawal.

(8) In addition to Department enforcement action, the Division may assess an administrative fee in accordance with Labor Code §413.020 and §133.305 of this subchapter (relating to Medical Dispute Resolution--General).

(q) Defense. A carrier may claim a defense to a medical necessity dispute if the carrier timely complies with the IRO decision with respect to the medical necessity or appropriateness of health care for an employee. Upon receipt of an IRO decision for a retrospective medical necessity dispute that finds that medical necessity exists, the carrier must review, audit and process the bill. In addition, the carrier shall tender payment consistent with the IRO decision, and issue a new explanation of benefits (EOB) to reflect the payment within 21 days upon receipt of the IRO decision.

(r) Appeal. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. Appeals of IRO decisions will be as follows:

(1) Non-Network Appeal Procedures. A carrier shall comply with the IRO decision in accordance with Labor Code §413.031(m). A party to a medical necessity dispute may seek judicial review of the IRO decision by filing a petition in a Travis County district court not later than the 30th day after the date on which the decision is received by the appealing party. The parties will be deemed to have received the decision on the acknowledgement date as defined in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission). Any decision that is not timely appealed becomes final. A party to a medical necessity dispute who appeals the decision shall, at the time the petition is filed, send a copy of the petition for judicial review to the IRO that issued the decision being appealed, and request that the IRO provide a record for the appeal. The party requesting the record shall pay the IRO copying costs for the records.

(2) Record for Non-Network Appeal. If a party to a medical necessity dispute files a petition for judicial review of the IRO decision, the IRO, upon request, shall provide a record of the review and submit it to the requestor within 15 days of the request. The record shall include the following documents that are in the possession of the IRO and which were reviewed by the IRO in making the decision:

(A) medical records;

(B) all documents used by the carrier in making the decision that resulted in the adverse determination under review by the IRO;

(C) all documentation and written information submitted by the carrier to the IRO in support of the review;

(D) the written notification of the adverse determination and the written determination of the reconsideration;

(E) a list containing the name, address and phone number of each provider who provided medical records to the IRO relevant to the review;

(F) a list of all medical records or other documents reviewed by the IRO, including the dates of those documents;

(G) a copy of the decision that was sent to all parties;

(H) copies of any pertinent medical literature or other documentation (such as any treatment guideline or screening criteria) utilized to support the decision or, where such documentation is subject to copyright protection or is voluminous, then a listing of such documentation referencing the portion(s) of each document utilized;

(I) a signed and certified custodian of records affidavit; and

(J) other information that was required by the Department related to a request from a carrier or the carrier's URA for the assignment of the IRO.

(3) Network Appeal Procedures. A party to a medical necessity dispute may seek judicial review of the decision as provided in Insurance Code §1305.355.

(s) Non-Network Spinal Surgery Appeal. A party to a preauthorization or concurrent medical necessity dispute regarding spinal surgery may appeal the IRO decision in accordance with Labor Code §413.031(l) by requesting a Contested Case Hearing (CCH).

(1) The written appeal must be filed with the Division Chief Clerk no later than 10 days after receipt of the IRO decision and must be filed in compliance with §142.5(c) of this title (relating to Sequence of Proceedings to Resolve Benefit Disputes).

(2) The CCH must be scheduled and held not later than 20 days after Division receipt of the request for a CCH.

(3) The hearing and further appeals shall be conducted in accordance with Chapters 140, 142, and 143 of this title (relating to Dispute Resolution/General Provisions, Benefit Contested Case Hearing, and Review by the Appeals Panel).

(4) The party appealing the IRO decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute. The IRO is not required to participate in the CCH or any appeal.

(t) Medical Fee Dispute Request. If the health care provider has an unresolved fee dispute related to health care that was found medically necessary, after the final decision of the medical necessity dispute, the provider may file a medical fee dispute in accordance with §133.305 and §133.307 of this subchapter (relating to Medical Dispute Resolution--General and Medical Dispute Resolution of Fee Disputes).

(u) Enforcement. If the Department believes that any person is in violation of the Labor Code, Insurance Code and related rules, the Department may initiate an enforcement action. Nothing in this section modifies or limits the authority of the Department or the Division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603183
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 804-4288

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PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

CHAPTER 276. GENERAL ADMINISTRATION
SUBCHAPTER B. OMBUDSMAN PROGRAM

The Office of Injured Employee Counsel (OIEC) proposes the repeal of §276.10 and §276.11, new §276.10, and amendments to §276.12, concerning ombudsman training and education and private meetings with unrepresented injured employees. The proposed repeal of §276.10 and §276.11, new §276.10, and amendments to §276.12 are necessary to implement OIEC's ombudsman education and training program pursuant to Labor Code §404.152 as amended by House Bill (HB) 7, 79th Texas Legislature, Regular Session.

The proposed repeal of §276.10 is necessary to reduce confusion as necessary definitions are proposed in new §276.10(a). Proposed repeal of §276.10 provides for future OIEC rulemaking initiatives, particularly in providing a single location for Chapter 276 definitions.

Proposed repeal of §276.11 and proposed new §276.10 are needed to provide an extensive ombudsman education and training program for an ombudsman's assistance to an unrepresented injured employee in the Texas workers' compensation system. The proposed repeal of §276.11 and new §276.10 are necessary to implement a detailed process and procedure to deliver workers' compensation education to ombudsmen, provide a system for continuing education for ombudsmen, and to assure that injured employees of Texas are provided with assistance in both informal and formal dispute resolution proceedings in the workers' compensation system.

The proposed amendments to §276.12 are necessary to complete the transfer of the ombudsmen education and training program from the former Texas Workers' Compensation Commission to OIEC. The proposed amendments to §276.12 are necessary to provide clarity to ombudsmen and injured employees in preparing for informal and formal proceedings.

Luz Loza, Director of Injured Employee Services, has determined that for each year of the first five years the proposed repeal, new, and amended sections shall be in effect, there shall be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Loza has determined that for each year of the first five years the repeal, new, and amended sections are in effect, the public benefits anticipated as a result of the proposal shall be a more comprehensive ombudsman education and training program. Injured employees shall benefit from an ombudsman program where ombudsmen provide assistance to injured employees in both informal and formal workers' compensation proceedings. Both injured employees and ombudsmen will benefit from the existence of regional staff attorneys who will provide legal research and advice to ombudsmen assisting injured employees.

It is anticipated that all system participants will benefit from a workers' compensation system where unrepresented injured employees receive a higher level of assistance in benefit review conferences and contested case hearings. An increased level of ombudsmen education and training is likely to result in a workers' compensation system that provides increased access to assistance, narrows the information disparity in proceedings where an injured employee's right to benefits is at stake, and provides additional information and education on the injured employee's rights and responsibilities in the workers' compensation system. Further, an increased ombudsmen education and training program is anticipated to provide ombudsmen with a skill set and resources to provide a more efficient level of assistance for Texas' injured employees.

The proposed repeal, new, and amended sections provide consistency with Chapter 404 of the Texas Labor Code and clarify that OIEC is the state agency that offers ombudsman assistance to unrepresented injured employees in the Texas workers' compensation system. The probable economic cost to persons required to comply with the proposal shall be OIEC's costs of obtaining and renewing an ombudsman's adjuster's license. OIEC's cost to obtain an adjuster's license from the Texas Department of Insurance for an ombudsman is $50 with an additional $50 biennial cost to maintain the adjuster's license. However, the requirement for ombudsman to obtain an adjuster's license is not a new requirement and poses no new costs. There are no additional costs as a result of the proposed repeal, new, or amended sections.

Further, any additional economic costs either exist under current rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed repeal, new, and amended sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposed repeal, new, and amended sections would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 24, 2006 to Brian White, Counsel for Policy Development, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Counsel for Policy Development.

28 TAC §276.10, §276.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of Injured Employee Counsel or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006. Section 404.151 provides for the maintenance of an ombudsman program; the assistance of unrepresented injured employees and the protection of their rights in the workers' compensation system; and the meeting of an ombudsman with an unrepresented injured employee privately for a minimum of 15 minutes prior to any informal or formal hearing. Section 404.152 provides for the designation, education and training,

and continuing education requirements to be an ombudsman. Section 404.152(c) provides that the public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen, which must include: education on the workers' compensation laws, rules, and appeals panel decisions; require ombudsmen undergoing training to be observed and monitored by an experienced ombudsman during daily activities; and assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.154 requires the office to widely disseminate information about the ombudsman program. Section 404.103 provides for the operation of the ombudsman program and requires the public counsel to assign staff attorneys, as appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.105 provides that the office, through the ombudsman program, may appear before the commissioner or division on behalf of an individual injured employee during an administrative dispute resolution process. Section 404.006 requires the public counsel to adopt rules to implement Chapter 404 of the Labor Code.

Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006 are affected by the repeal of §276.10 and §276.11.

§276.10. Definitions.
§276.11. Ombudsman Training Program/Continuing Education.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603158
Brian M. White
Counsel for Policy Development
Office of Injured Employee Counsel
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 804-4186

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28 TAC §276.10, §276.12

The new rule and amendments are proposed pursuant to Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006. Section 404.151 provides for the maintenance of an ombudsman program; the assistance of unrepresented injured employees and the protection of their rights in the workers' compensation system; and the meeting of an ombudsman with an unrepresented injured employee privately for a minimum of 15 minutes prior to any informal or formal hearing. Section 404.152 provides for the designation, education and training, and continuing education requirements to be an ombudsman. Section 404.152(c) provides that the public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen, which must include: education on the workers' compensation laws, rules, and appeals panel decisions; require ombudsmen undergoing training to be observed and monitored by an experienced ombudsman during daily activities; and assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.154 requires the office to widely disseminate information about the ombudsman program. Section 404.103 provides for the operation of the ombudsman program and requires the public counsel to assign staff attorneys, as appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings. Section 404.105 provides that the office, through the ombudsman program, may appear before the commissioner or division on behalf of an individual injured employee during an administrative dispute resolution process. Section 404.006 requires the public counsel to adopt rules to implement Chapter 404 of the Labor Code.

Texas Labor Code §§404.151, 404.152, 404.154, 404.103, 404.105, and 404.006 are affected by new §276.10 and the amendments to §276.12.

§276.10. Ombudsmen Education and Training Program.

(a) Definitions. The following words and phrases shall have the following meaning in this section unless the context clearly indicates otherwise:

(1) Adjuster's license: A workers' compensation license issued by the Texas Department of Insurance.

(2) Continuing education: A formal training program required for all ombudsmen in this state that includes continuing education for obtaining and retaining an adjuster's license.

(3) Ombudsmen education and training program: The training required by the Office of Injured Employee Counsel (OIEC) to serve as an ombudsman, which results in certification upon completion.

(b) Purpose. OIEC shall establish and maintain the ombudsmen education and training program to ensure consistent, quality, and thorough training of ombudsmen staff. The ombudsmen education and training program applies to every ombudsman, regardless of hire date. The ombudsmen education and training program shall include, but is not limited to:

(1) formal classroom training conducted by OIEC staff;

(2) on-the-job training monitored by a supervising ombudsman, senior ombudsman, and regional staff attorneys;

(3) observations of ombudsmen by supervising ombudsman, senior ombudsman, and regional staff attorneys;

(4) professional skill development and legal education on workers' compensation laws, rules, advisories, and appeals panel decisions by the regional attorneys; and

(5) resource meetings with OIEC's central staff to discuss current and pending issues instrumental to providing assistance to injured employees in informal and formal proceedings.

(c) OIEC staff's responsibilities regarding education and training. OIEC staff shall maintain the knowledge and skills needed to properly assist unrepresented injured employees in the workers' compensation system.

(1) Injured Employee Services is the division within OIEC that is responsible for the overall management of the ombudsman education and training program. Injured Employee Services' responsibilities include, but are not limited to:

(A) educating ombudsmen about the workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures, and application of such information to specific cases or factual situations;

(B) selecting team lead supervisors, training ombudsmen, and senior ombudsmen to observe, supervise, train, and provide feedback to ombudsmen on a daily basis;

(C) notifying regional staff attorneys if guidance, instruction, or legal research on technical areas is needed;

(D) establishing on-going training schedules for ombudsmen and evaluating the performance of ombudsmen's progress through the education and training program;

(E) maintaining documentation to monitor the effectiveness of the ombudsman program and coordinating with OIEC's Legal Services division to develop education and training materials to address systematic issues to enhance ombudsmen's effectiveness;

(F) examining the proficiency and competency of each ombudsman by conducting technical observations and identifying areas for professional improvement;

(G) providing targeted training to individual ombudsman for professional development and incorporating the technical observations and evaluations into the performance evaluation process;

(H) providing continuing education and training, at least annually, to ombudsmen on workers' compensation laws, rules, advisories, appeals panel decisions, dispute resolution, OIEC policies and procedures; and

(I) assigning a staff attorney to each ombudsman who will advise the ombudsman on providing assistance to injured employees and preparing for informal and formal proceedings.

(2) An ombudsman's responsibilities shall include, but is not limited to:

(A) obtaining and maintaining a valid workers' compensation adjusters' license issued by the Texas Department of Insurance and submitting a copy of the license to OIEC's central office;

(B) completing the ombudsmen education and training program;

(C) participating in OIEC conferences;

(D) completing all continuing education requirements;

(E) maintaining the technical and professional skills to perform all the duties of an ombudsman; and

(F) assisting and serving as an advocate for injured employees throughout the workers' compensation system.

§276.12. Procedures for Private Meetings with Unrepresented Injured Employees Prior to a Workers' Compensation Proceeding [~~Claimants~~].

[~~(a) Appropriate field office staff shall forward to each ombudsman in the field office a list of unrepresented claimants who have been notified of a benefit review conference or a benefit contested case hearing. The ombudsman shall maintain an up to date calendar of pending benefit review conferences and benefit contested case hearings.~~]

(a) [~~(b)~~] An ombudsman shall meet privately with an unrepresented injured employee [~~claimant~~] for a minimum of 15 minutes prior to each benefit review conference and benefit contested case hearing.

(b) [~~(c)~~] The 15-minute private meeting shall include:

(1) an overview of the dispute resolution process, and

(2) a review of the injured employee's [~~claimant's~~] disputed issues and applicable [~~the application of the~~] workers' compensation laws [~~statute~~], [~~the~~] rules, [~~of the commission~~] and appeals panel decisions.

(c) [~~(d)~~] If, at the beginning of a benefit review conference or benefit contested case hearing, the benefit review officer or benefit contested case hearing officer determines that the unrepresented injured employee [~~claimant~~] has not met with an ombudsman for a minimum of 15 minutes prior to the proceeding, the ombudsman shall request the benefit review officer or [~~benefit~~] contested case hearing officer to [~~shall~~] recess the proceeding to allow for the private meeting pursuant to Labor Code §404.151(b)(5) [~~as described in this rule~~].

(d) [~~(e)~~] If the injured employee [~~claimant~~] refuses to attend the required meeting prior to a benefit review conference or a contested case hearing, the injured employee [~~claimant~~] shall acknowledge such refusal in writing. If the injured employee [~~claimant~~] refuses to sign the acknowledgement, the ombudsman shall request that [~~of his or her refusal, the benefit review officer shall~~]:

(1) the injured employee receive a copy of Texas Labor Code §404.151, and

(2) the benefit review officer make a notation of the injured employee's refusal in the claim file or that the contested case hearing officer note such refusal in the hearing record.

[~~(1) provide the claimant a copy of Texas Labor Code, §409.041(b)(5); and~~]

[~~(2) make a notation of the claimant's refusal in the claim file, and proceed with the hearing.~~]

[~~(f) If the claimant refuses to attend the required meeting prior to a benefit contested case hearing, the claimant shall acknowledge such refusal in writing. If the claimant refuses to sign the acknowledgement of his or her refusal, the benefit contested case hearing officer shall:~~]

[~~(1) provide the claimant a copy of the Texas Labor Code, §409.041(b)(5); and~~]

[~~(2) make a record of the claimant's refusal to comply with §409.041(b)(5) and the provisions of this rule, and proceed with the hearing.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Brian M. White
Counsel for Policy Development
Office of Injured Employee Counsel
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §§15.5, 15.11, 15.12

The General Land Office (GLO) proposes amendments to §15.5 (relating to Beachfront Construction Standards) and §15.12 (relating to Temporary Orders Issued by the Commissioner), and a new §15.11 (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach). New §15.11(a) provides that local governments may issue certificates or permits for certain houses the lie seaward of the boundary of the public beach. New §15.11(b) provides definitions used in the section. New §15.11(c) provides requirements for a house to be eligible for repairs under this section. New §15.11(d) provides that the GLO will post a list of eligible houses on its Internet web site as soon as practicable following a survey determining the natural line of vegetation. New §15.11(e) provides required determinations that a local government must make before permitting repairs to eligible houses. New §15.11(f) provides that a local government shall coordinate with owners of eligible houses to remove beach debris. New §15.11(g) provides that only beach quality sand may be used in repairs, and the limits of sand placement. New §15.11(h) provides the information required for review of repair permits by the GLO. New §15.11(i) provides that a local government must monitor the repair of eligible houses, and may establish a monitoring program, the expenses of which are considered beach-related services. New §15.11(j) provides that a house eligible for repairs under this section may still be an encroachment on the public beach, and an action for removal under §61.018(a) may be brought unless the house is covered by a temporary order issued by the commissioner under §61.0185 (a "moratorium order"). An amendment to §15.5(c) provides that authorization of repairs under new §15.11 does not violate the prohibition on construction on the public beach or construction land ward of the public beach that functionally supports encroachments on the public beach. An amendment to §15.12(h) provides that local governments may authorize repairs under §15.11 for a house on the public beach easement even if that house is not subject to a moratorium order.

The purpose of the new §15.11 is to give local governments discretion to issue certificates and permits for repairs to houses that may be on the public beach easement because of weather events solely to maintain habitability. Most of the houses that currently lie seaward of the boundary of the public beach were under a moratorium order issued by the commissioner on June 7, 2004. All of those moratorium orders expired on June 7, 2006. The expiration of the moratorium orders means that the houses are again subject to possible actions for removal under §61.018(a) of the Texas Natural Resources Code. It also means that, absent the adoption of this rule, those houses will be ineligible for any legal repairs. The GLO has determined that the authorization of the limited repairs necessary to maintain habitability in those houses does not exacerbate the encroachment on or interference with the public beach easement any more than the passive relocation of those houses from landward of the public beach to seaward of its boundary by weather events. Therefore, the proposed rule and rule changes give local governments the discretion to permit repairs to these houses under limited circumstances. The rule changes continue the prohibition on repairs and construction seaward of mean high tide, which is state-owned submerged land in all instances.

Mr. Sam Webb, Deputy Commissioner for the GLO's Coastal Resources Program Area, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state government as a result of enforcing or administering the amended or new sections. There will be no fiscal impact on the local government as a result of enforcing or administering the amended sections.

Mr. Webb also has determined that for each year of the first five years that the rule will be in effect the public benefit will be that local governments are given discretion to determine repairs to houses located on the public beach that are necessary to maintain safe conditions on the beach.

Mr. Webb also has determined that there are no additional costs of compliance for small businesses or large businesses or individuals as result of the proposed changes.

The GLO has determined a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

The Land Office has reviewed the proposal to amend §15.5 and §15.12 and adding new §15.11 for consistency with the goals and policies of the Coastal Management Program (CMP). The applicable goals and policies are found at 31 TAC §501.26, relating to Policies for Construction in the Beach/Dune System, and §501.27, relating to Policies for Development in Coastal Hazard Areas. The Land Office has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendments will be distributed to Council members in order to provide them an opportunity to provide comment on the consistency of the proposed rule during the comment period.

The GLO has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings impact assessment required. The GLO has determined the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined the proposed amendments would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments being proposed.

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §61.011, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas.

Written comments on the proposed rulemaking and its consistency with the CMP may be submitted to Walter Talley, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX 78711-2873; facsimile number (512) 463-6311; email address walter.talley@glo.state.tx.us.

Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed amendments are published.

The amendments and new section are proposed under Texas Natural Resources Code §61.011(d)(2), (3), and (4), which provide the GLO with the authority to adopt rules concerning protection of the public beach easement from erosion or reduction caused by development or other activities on adjacent land, minimum measures needed to mitigate for adverse effect on public access, and reasonable exercises of the police power of local governments with respect to public beaches.

Texas Natural Resources Code §61.011 is affected by the proposed amendments and new section.

§15.5. Beachfront Construction Standards.

(a) - (b) (No change.)

(c) Encroachments on public beaches.

(1) Prohibition of construction on the public beach. Except as provided in §15.11, a [~~A~~] local government is prohibited from issuing a certificate authorizing any person to undertake any construction on the public beach or any construction that encroaches in whole or in part on the public beach. This prohibition does not prevent the approval of man-made vegetated mounds and dune walkovers under a properly issued dune protection permit and beachfront construction certificate. Any issuance or approval of a permit, certificate, or any other instrument contrary to this subsection is void.

(2) Construction landward of the public beach. Except as provided in §15.11, local [~~Local~~] governments shall not issue any beachfront construction certificate authorizing construction landward of the public beach that functionally supports or depends on, or is otherwise related to, proposed or existing structures that encroach on the public beach, regardless of whether the encroaching structure is on land that was previously landward of the public beach.

(d) (No change.)

§15.11. Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach.

(a) Purpose. The purpose of this section is to provide authority for local governments to issue permits or certificates for repairs to certain houses if any portion of the house is located seaward of the boundary of the public beach.

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) Beach debris--Anything that is not native to the beach and beach/dune system, including but not limited to pilings, concrete, fibercrete, rebar, riprap, boulders, automobile parts, rubble mounds, damaged dune walkovers, garbage, septic systems, and other objects, that may pose a hazard to public health and safety and/or no longer serve the purpose for which they were originally intended.

(2) Boundary of the public beach--The landward edge of the public beach, as described in §15.3(b). For purposes of this section, the location of the natural line of vegetation shall be determined by the General Land Office. The General Land Office may consult with the Bureau of Economic Geology of the University of Texas at Austin when making a determination under this section regarding the natural line of vegetation.

(3) Habitable--The condition of the premises which permits the inhabitants to live free of serious hazards to health and safety.

(4) House--A single or multi-family structure that serves as permanent, temporary or occasional living quarters for one or more persons or families.

(c) Eligible houses. To find a house eligible for a permit or certificate to make repairs under this section, the Land Office must determine that:

(1) The line of vegetation establishing the boundary of the public beach has moved as a result of erosion or a meteorological event;

(2) The house was located landward of the natural line of vegetation before the erosion or meteorological event occurred;

(3) No portion of the house is located seaward of mean high tide;

(4) The house was not damaged more than 50 percent or destroyed as the result of a meteorological event; and

(5) The house does not present an imminent threat to public health and safety.

(d) List of eligible houses. A list of the houses eligible to obtain permits and certificates under this section shall be posted on the Land Office's Internet web site, www.glo.state.tx.us, as soon as practicable following a survey by the General Land Office that determines the location of the natural line of vegetation.

(e) For a house eligible under this section, a local government may issue a certificate or permit authorizing repair of an eligible house if the local government determines that the repair:

(1) is solely to make the house habitable including reconnecting the house to utilities;

(2) does not increase the footprint of the house;

(3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation; and,

(6) does not include construction underneath, outside, or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

(f) Debris removal. Debris on the public beach creates a hazard to public health and safety and can threaten Gulf-facing properties. A local government shall coordinate with owners of eligible houses to remove beach debris from the public beach as soon as possible as a condition of the issuance of a certificate or permit under this section. All beach debris collected from the public beach shall be removed from the beach/dune system and disposed of in an appropriate landfill.

(g) Sand placement. Only beach-quality sand may be placed underneath the footprint of an eligible house and in an area up to five feet seaward of the house, provided that the sand may not be placed seaward of mean high tide except as part of an approved beach nourishment project. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(h) Land Office review. A local government shall submit the certificate or permit application for repair of an eligible house under this section to the commissioner for review. If the commissioner does not object to or otherwise comment on the application within ten working days of receipt of the application, the local government may act on the application. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make an affirmative determination regarding a permit or certificate for repairs. Local governments may require more information, but they shall submit to the Land Office the following information:

(1) the name, address, phone number, and, if applicable, fax number or electronic mail address of the applicant, and the name of the property owner, if different from the applicant;

(2) a complete legal description of the tract and a statement of its size in acres or square feet including the location of the property lines and a notation of the legal description of adjoining tracts;

(3) the floor plan, footprint or elevation view of the house identifying the proposed repairs;

(4) photographs of the site which clearly show the current conditions of the site; and

(5) an accurate map, site plan, plat or drawing of the site identifying:

(A) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(B) the location of the property lines and a notation of the legal description of adjoining tracts, and the location of any roadways, driveways and landscaping that currently exist on the tract;

(C) the location of any seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract;

(D) the location of the house and the distance between the house and mean high tide, and the natural line of vegetation; and,

(E) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(i) Monitoring. A local government is responsible for monitoring the repair of an eligible house under this section. A local government may conduct a monitoring program to study the effects of permitting repairs to an eligible house on the public's access to and use of the public beach. Expenses related to the monitoring program are considered beach-related services for the purpose of this subchapter.

(j) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. Except as provided in an unexpired temporary order issued by the commissioner under Section 61.085 of the Texas Natural Resources Code, the commissioner, the attorney general, a county attorney, district attorney, or criminal district attorney may file suit under Texas Natural Resources Code Section 61.018(a) to obtain a temporary or permanent injunction, either prohibitory or mandatory, to remove a house from the public beach without regard to whether the house is eligible for repairs under this section.

§15.12. Temporary Order Issued by the Land Commissioner.

(a) (No change.)

(b) Definitions. In addition to the definitions contained in §15.2 of this title (relating to Definitions), the following words and terms, as used in this section, shall have the following meanings:

(1) - (2) (No change.)

(3) Habitable--The condition of the premises which permits the inhabitants to live free of serious hazards [~~defects~~] to health and safety.

(4) (No change.)

(c) (No change.)

(d) While an order issued under this section is in effect, a local government may issue a certificate or permit authorizing repair of a house subject to this order if the local government determines that the repair:

(1) - (6) (No change.)

(7) does not include construction underneath, outside or around the house other than for reasonable access to or structural integrity of the house, provided that such repair does not create an additional obstruction to public use of and access to the beach.

(e) (No change.)

(f) While an order issued under this section is in effect, only beach-quality sand may be placed underneath the footprint of the house and in an area up to five feet seaward of the house. The beach-quality sand must remain loose and unconsolidated, and cannot be placed in bags or other formed containment. In addition, the beach-quality sand must be an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system. The use of clay or clayey material is not allowed.

(g) (No change.)

(h) While an order issued under this section is in effect, a local government is responsible for monitoring the repair of the house under this section. Any permit or certificate issued by a local government under this order expires automatically on the date the order expires. Except as provided in §15.11, local [~~Local~~] governments may not issue permits or certificates for repairs to houses located on the public beach easement that are not subject to an order issued under this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603089
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 305-8598

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.293

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of existing §3.293, concerning food; food; products; meals; food service. The existing §3.293 is being repealed so that the content can be updated in a new section §3.293 to reflect the October 1, 2003 changes made to Tax Code, §151.314 by House Bill 2425, 78th Legislature, Regular Session, 2003. The new section to be proposed will incorporate the legislative changes made to Tax Code, §151.314, including the taxable treatment of prepared food, the exemption of bakery items unless sold with plates or other eating utensils, and the treatment of juice that contains more than 50% vegetable or fruit juice by volume as a food product rather than as a soft drink.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by clarifying the information available to taxpayers regarding their tax responsibilities. There would be no anticipated significant economic cost to the public. This repeal is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal of the existing section and adoption of a new section implements Tax Code, §151.314.

§3.293. Food; Food Products; Meals; Food Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603066
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 475-0387

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34 TAC §3.293

The Comptroller of Public Accounts proposes a new §3.293, concerning food, food products, meals, and food service. The new section replaces the existing §3.293, which is being repealed so that the content is updated to reflect the changes made to Tax Code, §151.314 by House Bill 2425, 78th Legislature, Regular Session, 2003, including when tax is due on sales of prepared food, an exemption for sales of bakery products that are sold without utensils, and an exemption for sales of juice that contains more than 50% vegetable or fruit juice by volume sold by grocery or convenience stores.

Prepared food is defined in subsection (a)(13) of the new section to include food ready for immediate consumption sold by caterers, mobile vendors, or by restaurants, fast food outlets, lunch counters, cafeterias, hotels, and other similar types of places; food sold in a heated state or heated by the seller; food sold with eating utensils provided by the seller; or two or more food ingredients mixed or combined by the seller for sale as a single item, including items that are sold in an unheated state by weight or volume as a single item, but does not include food that is prepared at an off-site location or food that is only cut, repackaged, or pasteurized by the seller. Sales of sandwiches and individual ice cream sundries continue to be taxable regardless of whether the seller has eating facilities. Sellers with eating facilities should continue to collect sales tax on individual-sized packages or portions of food such as chips and crackers, but not on bakery items, such as cookies, that are sold without eating utensils. Pre-packaged ice cream sundries are not taxable if the package includes multiple ice cream sundries.

Wedding and bridal consultants, party planners, event planners, or destination management companies will be addressed in a new section.

In addition to these legislative changes, the new section has other changes in form, style, and wording to help taxpayers understand when to collect tax on sales of food. These changes are for the purpose of clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information concerning taxpayer responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §151.314.

§3.293. Food; Food Products; Meals; Food Service.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bakery items--Baked goods typically made by bakeries including bread, rolls, buns, biscuits, bagels, croissants, pastries, doughnuts, Danishes, cakes, tortes, pies, tarts, muffins, bars such as lemon bars, cookies, large pretzels, and tortillas. The term does not

include candy; snack items including chips, small pretzels, or crackers; sandwiches; tacos; or pizzas.

(2) Bulk vending machine--A device that contains unsorted items and randomly dispenses goods in approximately equal amounts without selection of a particular item or type of item by the customer.

(3) Candy--A confection made of natural or artificial sweeteners and includes bars, gum, drops, taffy, and chocolate, yogurt or caramel coated nuts, popcorn, raisins, and other fruits. The term does not include products used exclusively for cooking, such as chocolate bits and cake sprinkles.

(4) Combine--To combine two or more food products until the products do not separate (e.g. salsa, pesto, dip, and hummus).

(5) Eating facilities--Tables, benches, booths, chairs, or other facilities that allow customers to eat either on or adjacent to the seller's premises. For example, a food seller located adjacent to the food court in a shopping mall is considered to have eating facilities.

(6) Eating utensils--Eating utensils include trays, plates, knives, forks, spoons, glasses, cups, or straws.

(7) Food and food ingredients--Substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for taste, aroma, or nutritional value.

(A) Food and food ingredients include food products intended for human consumption, such as the following: cereal and cereal products, milk and milk products, including ice cream, butter, and yogurt, meat and meat products, poultry products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, condiments, and salt, sugar products, coffee and coffee substitutes, tea, juice (if more than 50% fruit or vegetable juice by volume), cocoa and cocoa products, canned foods, or any combination of these.

(B) Food products do not include:

(i) alcoholic beverages;

(ii) cigarettes, tobacco, or tobacco products;

(iii) candy;

(iv) ice;

(v) water; or

(vi) drugs, medicines, tonics, vitamins, dietary supplements, and medicinal preparations in any form. For further information about drugs, medicines, and dietary supplements, see §3.284 of this title (relating to Drugs, Medicines, Medical Equipment and Devices).

(8) Food ready for immediate consumption--Food, drinks, or meals prepared, served, or sold by restaurants, lunch counters, hotels, cafeterias, or other like places of business, and when sold, the food, drinks, or meals require no further preparation by the purchaser prior to consumption. And food sold through vending machines.

(9) Food sold through vending machines--Food dispensed from a machine or other mechanical device that accepts payment.

(10) Individual-sized packages--Bottles or cartons of milk, juice, and tea of a half-pint or less (8 ounces or less) are individual-sized. Packages or bags of snacks such as chips, pretzels and crackers, are individual-sized if less than 5 ounces.

(11) Mix--To blend two or more food items together into a single item that is more or less a uniform whole, but each ingredient may or may not retain its identity (e.g. potato salad, coleslaw or seafood salad).

(12) Mobile vendor--A person who sells food from a motor vehicle, push cart, or any other form of vehicle.

(13) Prepared food--Prepared food means:

(A) food ready for immediate consumption;

(B) food sold in a heated state or heated by the seller;

(C) food sold with eating utensils provided by the seller; or

(D) two or more food ingredients mixed or combined by the seller for sale as a single item, including items that are sold by weight or volume as a single item, but does not include food that is prepared at an off-site location, refrigerated food that is typically reheated prior to eating, or food that is only cut, repackaged, or pasteurized by the seller.

(14) Retirement facility--A facility that provides permanent housing and residence to individuals, a majority of whom are 60 years of age or older.

(15) Soft drinks--Carbonated and non-carbonated non-alcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or juices that contain more than 50% vegetable or fruit juice by volume.

(b) Sales of exempt food products or water. Food and food ingredients are exempt from sales tax unless otherwise taxable under subsection (c) of this section. Water is exempt as explained in §3.318 of this title (relating to Water-Related Exemptions). Heated and unheated bakery items are exempt regardless of size or quantity unless sold with plates or other eating utensils provided by the seller. Separately stated charges for bakery items sold by caterers, mobile vendors, or by restaurants, fast food outlets, lunch counters, cafeterias, hotels, and other similar places of business, are taxable if sold in conjunction with taxable meals in which plates or other eating utensils are provided. For example, a roll served in a restaurant with a meal is taxable even if the roll is served rolled up in a napkin rather than directly on the plate. However, the restaurant is not required to collect sales tax on bakery items purchased without utensils from its bakery.

(c) Taxable sales. The following are subject to sales tax:

(1) sales of soft drinks;

(2) sales of candy;

(3) sales of ice;

(4) sales of beer, wine, and other alcoholic beverages unless subject to mixed beverage gross receipts tax under Tax Code, Chapter 183;

(5) sales of cigarettes and other tobacco products;

(6) vending machines sales of food, soft drinks, and candy as explained in subsection (e) of this section;

(7) sales of prepared food as defined in subsection (a)(13) of this section, including:

(A) all food ready for immediate consumption, except bakery items, sold by caterers, mobile vendors, or by restaurants, fast food outlets, lunch counters, cafeterias, hotels, and other similar types of places;

(B) all sandwiches ready for immediate consumption including refrigerated triangle-type sandwiches such as ham, cheese,

tuna, egg salad, or chicken salad, but not sales of sandwiches that are frozen or partially frozen and that require thawing or heating by the customer prior to consumption;

(C) all individual ice cream sundries including ice cream served on cones, in cups or in dishes, ice cream sandwiches, bars, sticks, specialties, or similar ice cream sundries. It does not include ice cream sundries sold in prepackaged units containing multiple sundries or in cartons of ice cream greater than a half-pint. Popsicles are taxable regardless of the quantity in a package unless the popsicles are more than 50% juice;

(D) all individual-sized packages of food sold by a business that has eating facilities (e.g., deli section of a grocery store with seating, a convenience store, bakery, or doughnut shop with seating). For example, a half-pint carton of milk is taxable when sold in a convenience store with eating facilities but is exempt if sold in a convenience store without eating facilities; or

(8) sales of a bakery items sold with plates or other eating utensils provided by the seller.

(d) Vending machine sales. Food, candy, and soft drinks sold through vending machines are taxable. The sales tax is determined as follows:

(1) Soft drink and candy vending machine sales. The vending machine operator must remit sales tax on the total gross receipts from sales of soft drinks and candy without any deduction for spoilage, waste, or other losses.

(2) Food product vending machine sales. The vending machine operator must remit sales tax on 50% of the total gross receipts from sales of food products without any deduction for spoilage, waste, or other losses. Examples of food products include chips, crackers, pretzels, milk, tea, coffee, and juice if more than 50% vegetable or fruit juice by volume.

(3) Water, including bottled water, spring water, sparkling water, or mineral water, is exempt from sales tax. A vending machine operator is not required to remit sales tax on the receipts from sales of water. Flavored water (carbonated or non-carbonated) is a soft drink and a vending machine operator must remit tax on the total gross receipts for vending machines sales of flavored water.

(4) A vending machine operator must place a sign on the vending machine stating that the vended price includes sales tax. If sales tax is included in the price of the taxable item, the vending machine operator may back out the amount of the tax before reporting the taxable sales on his sales tax return. See §3.328 of this title (relating to Optional Reporting Methods for Grocers and Other Vendors).

(e) Bulk vending machine sales. Food, gum, candy, and toys for children sold for $0.50 or less from a bulk vending machine, as defined in subsection (a)(2) of this section, are exempt from sales tax. A bulk vending machine operator that has only exempt bulk vending machine sales may choose to obtain a sales tax permit and file sales tax returns so that the operator is able to purchase the gum, candy, or toys tax free for resale by giving the supplier a properly completed resale certificate. If a vending machine operator has both taxable vending machine receipts as explained in subsection (d) of this section, and exempt bulk vending machine sales as explained in this subsection, the operator must keep detailed records showing which items are dispensed from the bulk vending machines and which items are dispensed from the other vending machines.

(f) Food stamp purchases. Food, candy, and soft drinks are exempt if purchased with food stamps (including a Texas Lone Star debit card) under the food stamp program (7 U.S.C. Chapter 51) if the item can legally be purchased with food stamps. A seller should apply the amount of food stamps against the purchase of qualifying taxable items first so that the individual receives the best possible benefit from the food stamp exemption.

(g) Food sale exemptions. Certain organizations may sell prepared food, candy, and soft drinks tax-free. These tax-free sales are not counted against the two one-day, tax-free sales allowed to certain exempt nonprofit organizations under §3.322 of this title (relating to Exempt Organizations). Tax is due on sales of alcoholic beverages.

(1) Sales of food, prepared food, soft drinks, or candy by a church or at a function of the church are exempt.

(2) Sales of food, prepared food, soft drinks, or candy sold or served by public or private elementary or secondary schools, school districts, bona fide student organizations, or parent-teacher organizations and associations are exempt if the items are sold or served during a regular school day pursuant to an agreement with the proper school authorities. This exemption includes food, soft drinks, and candy sold through vending machines.

(3) Sales of food, prepared food, soft drinks, or candy by a parent-teacher organization or association during a fund-raising sale are exempt, if the proceeds do not go to the benefit of an individual.

(4) Sales of food, prepared food, soft drinks, or candy by a group associated with a private or public elementary or secondary school, if the sale is part of a fund-raising drive sponsored by the organization for its exclusive use.

(5) Sales of food, prepared food, soft drinks, or candy by a member or volunteer for a nonprofit organization devoted to the exclusive purpose of education or religious or physical training of persons under 19 years of age, if the sale is part of a fund-raising drive sponsored by the organization for its exclusive use.

(6) Sales of food, prepared food, soft drinks, or candy served by hospitals, day care centers, summer camps, or other institutions licensed by the state for the care of humans are exempt if sold or served to the patients, children, students, or residents of the facility. Sales of prepared food, soft drinks and candy to visitors or employees of the facility are taxable. Persons confined in correctional facilities operated under the authority, jurisdiction, or under a contract with the State of Texas or its political subdivisions are not exempt and must pay sales tax when they purchase taxable items such as prepared food, candy, soft drinks, and taxable items sold from vending machines. Meals and beverages served without charge to inmates confined in correctional facilities are not taxable.

(7) Food, prepared food, soft drinks, or candy sold or served by a retirement facility to its permanent residents are exempt. Sales of taxable items to visitors or employees of the facility are taxable.

(h) Responsibilities of sellers of taxable food and beverages.

(1) A seller must collect sales tax on all taxable sales. The seller is required to obtain a sales tax permit, file sales tax returns and remit the tax to the comptroller. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(2) A seller must collect sales tax on the total sales price of taxable items, including separately stated charges for preparing, serving, or delivering taxable items, charges for the room or facility in which the meals and beverages are served, and charges for the cost or expense of items such as tables, chairs, tableware, and tablecloths used by the seller in providing the food service. These reusable items are used by the food service provider (not rented to the customer) and may not be purchased tax free for resale.

(A) A cash discount (including a discount coupon) allowed by a seller reduces the sales price of a taxable item, and the seller should collect sales tax on the actual amount paid by the customer for the discounted meals or beverages. For example, a seller should charge sales tax on the price of the single meal when accepting a discount coupon that allows the customer to purchase two meals for the price of one.

(B) Separately stated charges for mandatory tips or gratuities may be excluded from the sales price if the charges meet the criteria for exclusion as explained in §3.337 of this title (relating to Gratuities). Voluntary tips or gratuities left by customers for food service employees are not subject to sales tax.

(3) A seller of taxable items must keep accurate records that clearly identify sales of exempt items and sales of taxable items. The records must separately stated charges for the exempt items from the charges for taxable items. Examples of records include sales invoices, receipts, and cash register coding records. If a seller's records do not clearly identity exempt sales from taxable sales, all sales are presumed taxable.

(4) A seller must pay sales or use tax on the purchase, lease, or rental of all taxable items unless otherwise exempt under the law. Examples of equipment and supply items taxable to a food service business include, but are not limited to, tables, chairs, reusable place mats, tablecloths, cloth napkins, silverware, dishes, dispensers such as salt and pepper shakers and glass creamers, garbage cans and garbage can liners, janitorial items such as mops and mop holders, grill bricks, aprons, menus and menu inserts, and hand tools such as cooking utensils, cutting knives, and lime squeezers.

(5) A seller may give a resale certificate to a supplier for the tax-free purchase of items that are transferred to the customer with the food or beverages. Such items must not be reusable by the seller to qualify for the sale for resale exemption. See §3.285 of this title (relating to Resale Certificates; Sales for Resale). Persons who process food for sale qualify for an exemption on the wrapping and packaging used to package the food for sale. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies). Examples of items qualifying for exemption include disposable paper products, wooden, plastic, and aluminum products that are transferred to the customer. Other examples include cake boxes, lunch boxes, disposable cups, paper and plastic containers, bottle wraps, butter chip trays, disposable paper or plastic plates, plastic knives, forks, and spoons, paper napkins, soda straws, toothpicks, french fry boxes, stir sticks, ice cream sticks, disposable souffle cups, hot dog trays, and other types of disposable trays.

(6) A person processing food for sale is a manufacturer and may claim a sales or use tax exemption on purchases of equipment and other taxable items that qualify for exemption under Tax Code, §151.318. For example, a restaurant may claim an exemption on the purchase of an oven or a mixer, directly used in baking or mixing. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) for further information regarding these exemptions. The exemption in Tax Code, §151.317 for natural gas and electricity used in manufacturing is not applicable when the gas or electricity is used to prepare or store prepared food.

(7) As a matter of convenience, a food service business, such as a restaurant selling prepared food, may sell prepared food tax free to a food service employee immediately before, during, or immediately after the employee's shift. This provision applies to employees involved in preparing or serving food at the food service location.

(i) Universities, colleges, junior colleges, or other institutions of higher learning. Universities and colleges are required to collect sales tax on taxable sales as explained in subsection (c) of this section. If a charge for meals is not separately stated and is included in a lump-sum price to a student for room, the university or college is required to remit sales tax to the comptroller on the portion of the lump-sum charge attributable to the taxable meals.

(j) Hotels and other places that provide sleeping accommodations. Places that provide sleeping accommodations to the public, including motels, tourist houses, lodging houses, inns, rooming houses, bed and breakfast places, must collect hotel occupancy tax under Tax Code, Chapter 156.

(1) A hotel must collect sales tax on prepared food.

(2) If the charges for prepared food are not separately stated and are billed with the lodging as a lump-sum price, then hotel occupancy tax, not sales tax, is due on the lump-sum charge. See §3.162 of this title (relating to Hotel Occupancy Tax Base and Collection of the Tax).

(3) A hotel is not required to collect sales tax on a separately stated charge for use of a hotel meeting room if the charge is unrelated to the sale, provision, or service of prepared food or the sale of other taxable items such as an admission charge for a taxable amusement service. See §3.298 of this title (relating to Amusement Services). The charge for the meeting room is subject to hotel occupancy tax if the meeting room is located in the hotel building where sleeping accommodations are provided.

(4) A hotel is required to pay sales tax on its purchase of taxable items (prepared food purchased from a caterer, soft drinks, candy, ice) provided to guests free of charge as complimentary items. However, a hotel is not required to accrue and pay sales tax on its purchase of exempt food products (loaves of bread, milk, cereal, fruit) even if provided to guests as free complimentary items.

(k) Caterers.

(1) Caterers are persons engaged in the business of preparing and serving meals, drinks, or other food products at locations designated by customers. A caterer is a seller of prepared food and beverages and must collect sales tax on all charges billed in connection with the sale of taxable meals.

(2) A caterer owes tax on the purchase, lease, or rental of tables, chairs, tablecloths, steam tables, and table decorations, used in providing the catered meals. A caterer may claim a resale exemption on the purchase of nonreusable items transferred to customers and on qualifying equipment such as mixers, used to prepare the food. See §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing) for information on qualifying equipment.

(3) If a caterer uses a room or facility in a hotel that is subject to hotel occupancy tax, the caterer is required to pay the occupancy tax to the hotel. There is no resale exemption for hotel occupancy tax. In addition, a caterer must collect sales tax on a separately stated charge passed on to the customer for the cost or expense of the room (including the occupancy tax) when billed to a customer as part of the taxable sale of catered meals.

(l) For information on the responsibilities of persons who sell and serve mixed alcoholic beverages, see §3.289 of this title (relating to Alcoholic Beverage Exemptions).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603067
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: July 23, 2006
For further information, please call: (512) 475-0387

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SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1204

The Comptroller of Public Accounts proposes an amendment to §3.1204, concerning administrative remedies for violations of Health and Safety Code, Chapter 161, Subchapter H or K. The amendment removes as a partner organization that may notify the comptroller of violations, the organization named Drug Abuse Resource Education (DARE), and replaces it with the current organization named Texas Statewide Tobacco Education and Prevention (STEP) in view of the organizations name change.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment will benefit the public by improving the comptroller's enforcement of tobacco distribution and advertising provisions of the Health and Safety Code as they relate to minors. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements the Health and Safety Code, §161.090.

§3.1204. Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H or K.

(a) (No change.)

(b) Notice of violations. The comptroller receives notice of a violation of Health and Safety Code, Chapter 161, Subchapter H or K from:

(1) (No change.)

(2) local law enforcement or Texas Statewide Tobacco Education and Prevention (STEP) [~~Drug Abuse Resource Education (DARE)~~];

(3) - (4) (No change.)

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200603080
Martin Cherry
Chief Deputy, General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.7, concerning Training Provider Advisory Boards. A proposed amendment to subsection (c) is changed to allow the chief administrator to appoint the advisory board chairman. Subsection (l) is amended to reflect the effective date for this change.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as adopted will be in effect there will be a positive benefit to law enforcement academies, contractual training, and academies alternative providers. Training providers are required by §215.3(b)(6), §215.5(f)(1), and §215.6(c)(1) to appoint an advisory board. This rule change would give the training provider chief administrator the authority to appoint the chairman of the advisory board.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized

the Commission to promulgate rules for administration of this chapter. The amendment as proposed is in compliance with Texas Occupations Code §1701.225 Program and School Requirements; Advisory Board.

No other codes, articles, or statutes are affected by this proposed amendment.

§215.7. Training Provider Advisory Board.

(a) - (b) (No change.)

(c) The chief administrator or head or the sponsoring organization may appoint a chairman or the board may [~~must~~] elect a chairman. The board [~~and~~] may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) - (k) (No change.)

(l) The effective date of this section is December 1, 2006 [~~June 1, 2006~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603090

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: July 23, 2006

For further information, please call: (512) 936-7717

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.11, concerning Legislatively Required Continuing Education for Licensees. Subsection (e)(1) and (2) are amended to reflect changes due to amended legislation that would not require a deputy constable to take a 20-hour training on civil process, if the deputy constable does not perform civil process duties. Subsection (f) is amended by changing the notification method to match the law. Subsections (g) and (h) are amended and add new language due to amended legislation of §1701.353(b), which requires the Commission to seek disciplinary action rather than expiration of license. Subsections (j) and (k) are deleted because they have expired. Subsection (m) is amended to reflect the effective date for these changes.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as adopted will be in effect, there will be some fiscal implications as a result of administering the section. The Commission will be charged with conducting additional administrative hearings as a result of this amendment.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to individuals as a result of the proposed section.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter. The amendment as proposed is in compliance with Texas Occupations Code §1701.251 Training Programs; Instructors, §1701.352 Continuing Education Programs, §1701.353(b) Continuing Education Procedures, and §1701.354 Continuing Education for Constables and Deputy Constables.

No other codes, articles, or statutes are affected by this proposed amendment.

§217.11. Legislatively Required Continuing Education for Licensees.

(a) - (d) (No change.)

(e) Each constable and deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle. The commission may waive the requirement for civil process training if :

(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or

(2) the constable or deputy constable requests [~~submits a written request for~~] a waiver because of hardship and the commission determines that a hardship exists.

(f) The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education. [~~Such notice will be provided not later than six months prior to the expiration of the current training cycle.~~]

(g) The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(h) [~~(g)~~] The commission may suspend or deny renewal of a license for failure to complete the legislatively required continuing education program at least once every training unit [~~cycle~~].

(i) [~~(h)~~] The commission may take action against a licensee for failure to complete the required training in either or both of the 24 month units within a training cycle.

(j) [~~(i)~~] Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24 month unit immediately following the date of licensing.

[~~(j) Individuals licensed as peace officers shall attend a course, developed by the commission, on asset forfeiture no later than September 1, 2002.~~]

[~~(k) Individuals licensed as peace officers shall attend a course, developed by the commission, on racial profiling no later than September 1, 2003.~~]

(k) [~~(l)~~] All peace officers must meet all continuing education requirements except where exempt by law.

(l) Licensees who have met the current legislatively required continuing education will have their license(s) automatically renewed on the last day of the training cycle unit.

(m) The effective date of this section is December 1, 2006 [~~March 1, 2002~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603091
Timothy A. Braaten
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For further information, please call: (512) 936-7717

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER S. MOTOR VEHICLE SALES FINANCE LICENSES

7 TAC §1.1402

The Finance Commission of Texas has withdrawn the proposed amendments to §1.1402 which appeared in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3341).

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603134
Leslie Pettijohn
Commissioner
Finance Commission of Texas
Effective date: June 9, 2006
For further information, please call: (512) 936-7622

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209

The Finance Commission of Texas has withdrawn proposed new §84.209 which appeared in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3783).

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603136
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: June 9, 2006
For further information, please call: (512) 936-7622

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1, §165.6

The Texas Medical Board withdraws the proposed amendment to §165.1 and proposed new §165.6 regarding an abortion on an unemancipated minor which appeared in the April 28, 2006 issue of the *Texas Register* (31 TexReg 3468).

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603115
Donald W. Patrick M.D., J.D.
Executive Director
Texas Medical Board
Effective date: June 9, 2006
For further information, please call: (512) 305-7016

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CHAPTER 170. AUTHORITY OF PHYSICIAN TO PRESCRIBE FOR THE TREATMENT OF PAIN

22 TAC §§170.1 - 170.3

The Texas Medical Board withdraws the proposed repeal of §§170.1 - 170.3, relating to Authority of Physician to Prescribe for the Treatment of Pain, which appeared in the April 28, 2006 issue of the *Texas Register* (31 TexReg 3471).

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603117
Donald W. Patrick, M.D., J.D.
Executive Director
Texas Medical Board
Effective date: June 9, 2006
For further information, please call: (512) 305-7016

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CHAPTER 170. PAIN MANAGEMENT

22 TAC §§170.1 - 170.3

The Texas Medical Board withdraws proposed new §§170.1 - 170.3, relating to Pain Management, which appeared in the April 28, 2006 issue of the *Texas Register* (31 TexReg 3471).

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603118

Donald W. Patrick, M.D., J.D.
Executive Director
Texas Medical Board
Effective date: June 9, 2006
For further information, please call: (512) 305-7016

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.4

The Polygraph Examiners Board withdraws the proposed amendment to §391.4, concerning State Examinations for Polygraph Examiners License, which appeared in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2369).

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603064
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: June 7, 2006
For further information, please call: (512) 424-2058

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

1 TAC §354.1066, §354.1067

The Health and Human Services Commission (HHSC) adopts new §354.1066, Physician Assistant Conditions of Participation, and §354.1067, Physician Assistant Benefits and Limitations, with changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3331). The text of the rules will be republished. The text of the rules do not contain any changes, however the section titles have changed to Physician Assistant Conditions of Participation and Physician Assistant Benefits and Limitations, therefore the text will be republished.

The new rules are necessary to comply with Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Currently, physician assistants cannot independently enroll as Medicaid providers, and their services must be billed through a physician's provider identification number. Rider 72 requires, in part, that physician assistants be allowed to enroll as independent Medicaid providers and bill under their own provider numbers.

The proposed §354.1066, Physician Assistant Conditions of Participation, sets out all requirements a Physician Assistant (PA) must satisfy in order to be a participating provider in the Texas Medicaid program. The proposed §354.1067, Physician Assistant Benefits and Limitations, lists the requirements for a Physician Assistant to be reimbursed under the Texas Medicaid program.

HHSC did not receive comments regarding the proposed rules during the comment period, which included a public hearing on May 15, 2006. The proposed rules were not modified for adoption.

The rules are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1066. Physician Assistant Conditions of Participation.

To be a provider of Medicaid covered services, a physician assistant must:

(1) be licensed as a physician assistant by the Texas Physician Assistant Board as described in the Occupations Code §204.101(2) and (3);

(2) comply with all applicable federal and state laws and regulations governing the service provided;

(3) be enrolled and approved for participation in the Texas Medical Assistance Program;

(4) sign a written provider agreement with the Health and Human Services Commission (HHSC) or its designee;

(5) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including federal and state regulations, rules, manuals, standards, and guidelines published by HHSC or its designee; and bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by HHSC or its designee.

§354.1067. Physician Assistant Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by HHSC or its designee, services performed by a licensed physician assistant are considered for reimbursement if the services:

(1) are within the scope of practice for a physician assistant, as defined by the licensing board and state law;

(2) are consistent with rules and regulations promulgated by the Texas State Medical Board ; and

(3) would be covered by the Texas Medical Assistance Program if provided by a licensed physician (MD or DO).

(b) Services must be reasonable and medically necessary as determined by HHSC or its designee to be considered for reimbursement.

(c) Covered services provided by a physician assistant may be billed under the physician assistant's Texas Medical Assistance Program provider number. Licensed physician assistants who are employed or remunerated by a physician, hospital, facility, or other provider may bill the Texas Medical Assistance Program directly for their services, using the licensed physician assistant provider number. If the services are benefits reimbursed through Medicaid and the physician assistant bills under a licensed physician assistant provider number, payment will be made to the physician assistant.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603108
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 1, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

DIVISION 16. CERTIFIED NURSE MIDWIFE SERVICES

1 TAC §354.1251

The Health and Human Services Commission (HHSC) adopts amended §354.1251, Benefits and Limitations, with changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3332). In addition, the title for the rule has been modified by adding the word "Certified" to Nurse Midwife Services to reflect the appropriate title of these providers. The rule will be republished with the revisions described below.

As amended, §354.1251, Benefits and Limitations, lists all requirements for a Certified Nurse Midwife (CNM) to be a participating provider in the Texas Medicaid program. This rule has a corresponding reimbursement rule, 1 TAC §355.8161, relating to reimbursement for CNM services. Section 355.8161 is being amended to implement requirements of Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. As part of the amendment of §355.8161, language more appropriate to a program rule is being deleted from §355.8161 and added to §354.1251. The purpose of this amendment is only to add the program language from §355.8161 to §354.1251.

HHSC received comments regarding the proposed rule during the comment period, which included a public hearing on May 15, 2006. Comments were received from the Coalition for Nurses in Advanced Practice. A summary of the comments and HHSC's responses follows.

Comment:

HHSC received a comment from the Coalition for Nurses in Advanced Practice expressing concern that a portion of the amended text is duplicative of existing text within the rule. Specifically text within amended paragraph (7) is duplicative of existing text in paragraph (4). The commenter requested that the duplicative text be removed from the rule.

Response:

HHSC acknowledges the comment and agrees that amended paragraph (7) is duplicative of paragraph (4). HHSC will delete paragraph (7). The rule has been amended to reflect this change.

Comment:

HHSC received a comment from the Coalition for Nurses in Advanced Practice that the current text of paragraph (4) related to Certified Nurse Midwife protocols and managing medical aspects of care are unnecessary, confusing and incorrect. The commenter suggested that this subsection retain only the text related to the prohibition of duplicative charges to the Medicaid Program.

Response:

HHSC acknowledges the comment. However, paragraph (4) was not a subject of this rulemaking. Before making changes to paragraph (4), HHSC would want to obtain input from other stakeholders and initiate a formal rulemaking action to solicit public comment. In addition, HHSC was not able to determine from the comment why paragraph (4) was thought to be unnecessary, confusing or incorrect. The purpose of paragraph (4) is to inform providers when CNM services will be reimbursed by Medicaid. No change was made to the rule in response to this comment.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1251. Benefits and Limitations.

Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC) or its designee and according to state and federal laws, rules, and regulations, and in the case of services furnished in an institution, hospital or other facility to the extent permitted by the institution, hospital, or facility, nurse-midwife services are limited as follows.

(1) Nurse-midwife services must be provided by a certified nurse-midwife (CNM) who is enrolled and approved for participation in the Texas Medical Assistance (Medicaid) Program.

(2) Nurse-midwife services are covered if the services:

(A) Are within the scope of practice for certified nurse midwives, as defined by state law;

(B) Are consistent with rules and regulations promulgated by the Board of Nurse Examiners for the State of Texas or other appropriate state licensing authority; and

(C) Would be covered by the Texas Medical Assistance Program if provided by a licensed physician (M.D. or D.O.).

(3) For purposes of coverage and reimbursement by the Medicaid Program, deliveries by a CNM that are performed in a general or acute care hospital or special hospital or facility must be done in a hospital or facility licensed and approved by the appropriate state licensing authority for the operation of maternity and newborn services and approved by the department for participation in the Texas Medical Assistance Program. Home deliveries performed by a CNM are reimbursable when HHSC or its designee has prior authorized the home delivery. The CNM must submit a written request for prior authorization during the recipient's third trimester of pregnancy. The CNM must include a statement signed by a licensed physician who has examined the recipient during the third trimester and determined that at that time she is not at high risk and is suitable for a home delivery.

(4) To be directly reimbursed by the Texas Medical Assistance Program, a CNM who manages the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act must perform the services according to the written protocols required by the State Board of Nurse Examiners and the services must not be duplicative of other charges to the Medicaid Program. For services other than nurse-midwife services, other provisions of the state plan apply.

(5) The Medicaid Program does not reimburse the CNM for conducting childbirth education classes.

(6) HHSC or its designee reimburses only the CNM actually performing or directing the approved service, unless federal requirements related to reassignment of claims have been met.

(7) Reimbursement for services that are other than nurse-midwife services are governed by the applicable provisions of the Medicaid Program, as specified by HHSC.

(8) A nurse-midwife is not reimbursed directly by the Medicaid Program for services provided if employed, salaried, or reimbursed by a hospital, nursing facility, other institution, or facility where the nurse-midwife's remuneration for services is included in the reimbursement formula or vendor payment to the hospital, facility, institution, or other provider.

(9) CNMs who are employed by or remunerated by a physician, health maintenance organization (HMO), hospital, or other facility may not bill the Medicaid Program directly for nurse-midwife services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the Medicaid Program, payment may be made to the physician, hospital, or other provider, if approved for participation in the Medicaid Program who employs or reimburses the nurse-midwife. The basis and amount of Medicaid reimbursement depends on the nurse-midwife services actually provided, who provided the services, and the reimbursement methodology utilized by the Medicaid Program as appropriate for the services and provider(s) involved.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603109
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 1, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

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DIVISION 21. CERTIFIED REGISTERED NURSE ANESTHETISTS' SERVICES

1 TAC §354.1301

The Health and Human Services Commission (HHSC) adopts amended §354.1301, Benefits and Limitations, with changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3334). As described below, the rule will be republished with revisions based on comments received.

Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005, requires, in part, that HHSC reimburse advanced practice nurses (APNs) for services billed under the APN's Medicaid provider number. APNs include Certified Registered Nurse Anesthetists (CRNAs).

This amendment updates language in the rule by replacing "department" with the "Health and Human Services Commission" or "HHSC." In conjunction with amending this program rule, HHSC also amended 1 TAC §355.8221, relating to reimbursement for CRNAs. In the process of amending §355.8221, HHSC deleted language more appropriate for a program rule from the reimbursement rule and added it to §354.1301. Section 354.1301, as amended, now lists all requirements for a CRNA to be a participating provider in the Texas Medicaid program.

HHSC received comments regarding the proposed rule during the comment period, which included a public hearing on May 15, 2006, from the Coalition for Nurses in Advanced Practice and the Texas Association of Nurse Anesthetists. A summary of comments and HHSC's responses follows.

Comment:

HHSC received comments from the Coalition for Nurses in Advanced Practice and the Texas Association of Nurse Anesthetists that the lead phrase for subsection (a), which relates to an effective date for services, is related to a reimbursement change and is unnecessary. The commenters requested that the phrase be removed from the rule.

Response:

HHSC acknowledges the comment and agrees to delete the following language: "Effective for services provided on or after September 1, 1991, and" from subsection (a) of the rule. The rule has been modified to reflect this change.

Comment:

HHSC received a comment from the Texas Association of Nurse Anesthetists recommending that §354.1301(b)(1) be replaced with text consistent with Texas Department of State Health Services rule 25 TAC §135.11, Anesthesia and Surgical Services, which identifies practitioners who may administer all categories of anesthesia and sedation, including CRNAs.

Response:

HHSC acknowledges the comment and agrees with the commenters to revise paragraph (b)(1) as follows: "Provided by a CRNA practicing in accordance with the Nursing Practice Act and the rules and regulations promulgated by the Board of Nurse Examiners." The rule has been modified to reflect this change.

Comment:

HHSC received a comment from the Texas Association of Nurse Anesthetists (TANA) concerning §354.1301(b)(3). TANA requested that the word "prescribed" be replaced with the word "ordered." TANA noted that use of the term "ordered" is consistent with Chapter 157 of the Occupations Code as it describes situations in which a physician may delegate particular tasks.

Response:

HHSC acknowledges the comment and agrees with the commenter that the word "prescribed" should be replaced with the word "ordered" in §354.1301(b)(3). The rule has been modified to reflect this change.

Comment:

HHSC received comments from the Coalition for Nurses in Advanced Practice (CNAP) and the Texas Association of Nurse Anesthetists (TANA) regarding §354.1301(b)(3). The commenters asked that HHSC either delete the words "and supervised" or, alternatively, replace the phrase "to the extent allowed by state law" with the phrase "to the extent required by state law." In support of this change, the commenters referenced Texas Attorney General Opinion No. JC-117 dated September 28, 1999.

Response:

HHSC understands Attorney General Opinion No. JC-117 to leave the issue of physician supervision of CRNAs to the professional judgment of the physician. The opinion neither requires nor proscribes supervision. And while HHSC recognizes the BNE's authority to regulate CRNAs, the policy question for HHSC raised by the comment is whether Medicaid will continue to require supervision of CRNA services as a condition of reimbursement. Medicaid's decision does not turn on whether supervision is required. Moreover, the requested change is not within the scope and intent of the amendments being made in this rulemaking action. Before making the change requested by CNAP and TANA, HHSC would want to obtain input from other stakeholders and initiate a formal rulemaking action to solicit public comment. Finally, after consideration, in the interests of public health and safety, even though not required, Medicaid has determined that it will continue to make supervision by a physician, dentist, or podiatrist a condition for reimbursement for CRNA services. Section 354.1301 provides notice to practitioners and the public that such supervision is a condition of payment by Medicaid. No change to the rule has been made based on this comment.

Comment:

HHSC received a comment from the Coalition for Nurses in Advanced Practice and the Texas Association of Nurse Anesthetists regarding §354.1301(b)(4) to delete the entire section. The commenters indicated that the section does not accurately reflect the current working environment for CRNAs and anesthesiologists. The commenters believe that the language of the section also unjustifiably favors services provided by an anesthesiologist over the services of a CRNA.

Response:

HHSC acknowledges the comment. Section 354.1301(b)(4) reflects current policy, as recited in section 16.3 of the 2006 *Texas Medicaid Provider Procedures Manual* and is based on current reimbursement methodology requirements. In addition, the comment is unrelated to the purpose for which this amendment is being undertaken, that is, to update language to the extent possible and to insert appropriate program language deleted from §355.8221. However, HHSC will consider this comment in a future revision in conjunction with other recommended changes to rules relating to Advanced Practice Nurses, including CRNAs, which will allow other stakeholders to offer public comment on changes to §354.1301(b)(4). No change was made to the rule in response to this comment.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1301. Benefits and Limitations.

(a) Anesthesia services provided by a Certified Registered Nurse Anesthetist (CRNA) are covered by the Texas Medical Assistance Program and are subject to the specifications, conditions, requirements, and limitations specified in this section and established by the Texas Health and Human Services Commission (HHSC) or its designee.

(b) To be payable, the services must be:

(1) Provided by a CRNA practicing in accordance with the Nursing Practice Act and the rules and regulations promulgated by the Board of Nurse Examiners;

(2) Reasonable and medically necessary as determined by HHSC or its designee;

(3) Ordered and supervised by a physician (MD or DO), dentist, or podiatrist, to the extent allowed by state law, who must be licensed in the state in which he or she practices; and

(4) Provided under one of the following conditions:

(A) No physician anesthesiologist is on the medical staff of the facility where the services are provided;

(B) As determined in accordance with the policies of the facility in which the services are provided, no physician anesthesiologist is available to provide the services;

(C) The physician, dentist, or podiatrist performing the procedure requiring the services specifically requests the services of a CRNA;

(D) The eligible recipient requiring the services specifically requests the services of a CRNA;

(E) The CRNA is scheduled or assigned to provide the services in accordance with policies of the facility in which the services are provided; or

(F) The services are provided by the CRNA in connection with a medical emergency.

(c) The Texas Medical Assistance Program will not reimburse the CRNA for equipment or supplies. Equipment and supplies are the responsibility of the facility in which the CRNA services are provided. If the equipment and supplies are covered and reimbursable by the Texas Medical Assistance Program, payment may be made to the facility if the facility is approved for participation in the Texas Medical Assistance Program. The basis and amount of reimbursement depends on the reimbursement methodology utilized by the Texas Medical Assistance Program for the services and providers involved.

(d) The scope of this section is limited to reimbursement policy for anesthesia services under the Texas Medical Assistance Program. Nothing contained in this section shall be construed to modify, supersede, or otherwise affect any other existing federal or state law or regulation or institutional practice regarding the administration of anesthesia.

(e) Reimbursement for covered CRNA services may be made to the CRNA actually performing the services or, provided that federal requirements related to reassignment of claims are met, to a hospital, physician, dentist, podiatrist, group practice, or ambulatory surgical center with which the CRNA has an employment or contractual relationship.

(f) Physician reimbursement for supervision of CRNAs is governed by the Health and Human Service Commission's policies regarding physician services.

(g) HHSC or its designee reimburses Texas Medical Assistance Program allowable CRNA services only when the services are submitted for payment under a CRNA provider number.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603110
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 1, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8093

The Texas Health and Human Services Commission (HHSC) adopts new §355.8093, Physician Assistants, without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3338) and will not be republished.

Background and Justification

This new rule was proposed pursuant to Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Rider 72 requires, in part, that physician assistants (PAs) be allowed to enroll as independent Medicaid providers and bill under their own provider numbers. The rule sets out the methodology by which services provided and billed by a PA will be reimbursed.

Section 355.8093 provides that covered professional services provided and billed by a PA are reimbursed on the basis of the lesser of the PA's billed charges or 92 percent of the reimbursement for the same service paid to a physician. It also provides that PAs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services and injections.

HHSC received one written comment during the 30-day comment period from a physician who trains PAs. No changes are required to the new rule. A summary of the comment and HHSC's response follows.

COMMENT: One physician commented that he was not opposed to the reimbursement methodology; however, he requested confirmation that the new rule does not change the scope of practice for PAs or the physician supervision requirements.

RESPONSE: Staff provided the physician with the requested confirmation. No revisions have been made to 1 TAC §355.8093 based on the comment.

The new rule is adopted under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603111
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 1, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to the following reimbursement methodology rules: Division 9, Certified Nurse Midwives, §355.8161; Division 12, Certified Registered Nurse Anesthetists, §355.8221; and Division 15, Nurse Practitioners and Clinical Nurse Specialists, §355.8281. Sections 355.8161 and 355.8281 are adopted without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3339) and will not be republished. Minor changes have been made to §355.8221, so the text of the rules will be republished.

Background and Justification

The rule amendments were proposed pursuant to Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Rider 72 requires, in part, that HHSC reimburse advanced practice nurses (APNs) for services billed under the APN's Medicaid provider number. According to the Texas Board of Nurse Examiners, the correct titles for APNs are nurse practitioners (NPs), clinical nurse specialists (CNSs), certified registered nurse anesthetists (CRNAs), and certified nurse midwives (CNMs). The amendments revise the methodology by which these providers will be reimbursed.

Revisions to §355.8161, concerning certified nurse midwives (CNMs), increased the reimbursement percentage for covered professional services from 85 to 92 percent of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). Certified nurse midwives will be reimbursed for other billing codes at the same reimbursement level as physicians. The amendments removed program policy language that was not appropriate for reimbursement methodology rules, changed the title of Division 9 from "Nurse-Midwife Services" to "Certified Nurse Midwives," and changed the title of the rule from "Reimbursement" to "Reimbursement Methodology."

Revisions to §355.8221, concerning Certified Registered Nurse Anesthetists (CRNAs), increased the reimbursement percentage for covered anesthesia services from 85 to 92 percent of the reimbursement for the same anesthesia service paid to a physician (M.D. or D.O.). The amendments removed program policy language that was not appropriate for reimbursement methodology rules, changed the title of Division 12 from "Certified Registered Nurse Anesthetists' Services" to "Certified Registered Nurse Anesthetists," and changed the title of the rule from "Reimbursement" to "Reimbursement Methodology."

Revisions to §355.8281, concerning Nurse Practitioners and Clinical Nurse Specialists (NPs and CNSs), increased the reimbursement percentage for covered professional services from 85 to 92 percent of the reimbursement for the same professional services paid to a physician (M.D. or D.O.). Nurse practitioners and clinical nurse specialists will be reimbursed for other billing

codes at the same reimbursement level as physicians. The amendments changed the title of Division 15 from "Certified Family Nurse Practitioner and Pediatric Nurse Practitioner" to "Nurse Practitioners and Clinical Nurse Specialists," as well as changed the title of the rule from "Reimbursement" to "Reimbursement Methodology."

HHSC received comments during the 30-day comment period. Written comments were received from the Coalition for Nurses in Advanced Practice (CNAP) and the Texas Academy of Nurse Anesthetists (TANA). The rules at 1 TAC §355.8221 were modified in response to the comments. A summary of the comments and HHSC's response follows.

COMMENT: CNAP and TANA requested that the phrase "and billed under the CRNA's own provider number" be removed from 1 TAC §355.8221, since CRNAs are required to bill Medicaid under their own provider numbers by the proposed program rules at 1 TAC §354.1301(g).

RESPONSE: 1 TAC §355.8221 has been revised accordingly.

DIVISION 9. CERTIFIED NURSE MIDWIVES

1 TAC §355.8161

The amendment is adopted under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603112
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 1, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

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DIVISION 12. CERTIFIED REGISTERED NURSE ANESTHETISTS

1 TAC §355.8221

The amendment is adopted under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8221. Reimbursement Methodology.

Effective for services delivered on and after March 1, 2006, covered anesthesia services provided by a certified registered nurse anesthetist (CRNA) are reimbursed the lesser of the CRNA's billed charges or 92% of the reimbursement for the same anesthesia service paid to a physician (M.D. or D.O.) anesthesiologist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603113
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: April 21, 2006
For further information, please call: (512) 424-6900

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DIVISION 15. NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS

1 TAC §355.8281

The amendment is adopted under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
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Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 358. MEDICAID ELIGIBILITY

SUBCHAPTER I. MEDICAID BUY-IN PROGRAM

1 TAC §§358.801, 358.803, 358.805, 358.807, 358.809, 358.811, 358.813, 358.815, 358.817, 358.819

The Texas Health and Human Services Commission (HHSC) adopts new Subchapter I, Medicaid Buy In Program (MBI), and new §§358.801, 358.803, 358.805, 358.807, 358.809, 358.811, 358.813, 358.815, 358.817 and 358.819. Sections 358.801, 358.803, 358.805, 358.807, 358.809, 358.811, 358.813, 358.815 and 358.819 are adopted without changes

to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 950) and will not be republished. Section 358.817 is adopted with changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 950). The text of the rule will be republished.

The amendment to Chapter 358 was undertaken as a result of Senate Bill 566, 79th Legislature, Regular Session, 2005, which added Section 531.02444, Government Code. Section 531.02444 requires the Health and Human Services Commission (HHSC) to implement a Medicaid Buy-In program for certain persons with disabilities under the option available to states under 42 U.S.C. §1396a(a)(10)(A)(ii)(XIII).

HHSC received written comments on the amendment from two advocacy groups, Austin Resource Center for Independent Living and the National Multiple Sclerosis Society. A summary of the comments and HHSC's responses follow. The Health and Human Services Council voted to support the proposal at its December 2, 2005 meeting.

Comment: Austin Resource Center for Independent Living, Inc. (ARCIL) commented that existing work incentives are flawed as related to a married couple, both of whom are eligible for Supplemental Security Income (SSI). When one person generates work income sufficient to cause loss of cash benefits, work incentives are available for that individual to retain Medicaid eligibility. The non-earning spouse, however, will lose Medicaid eligibility, and work incentives do not apply to the spouse. The Medicaid Buy-In rules, and corresponding amendments to the Medicaid State Plan, should contain provisions to maintain the Medicaid eligibility of the non-earning spouse. Such provisions might entail exempting the earnings in determining the eligibility of the non-earning spouse, in effect, treating the non-earning spouse as a single individual.

Response: HHSC has made no changes to the proposed rule as a result of the comment. Section 4733 of the Balanced Budget Act of 1997 (BBA) created a new optional categorically needy eligibility group (42 U.S.C. §1396a(a)(10)(A)(ii)(XIII)). This section allows states to provide Medicaid to disabled working individuals who, because of relatively high earnings, cannot qualify for Medicaid under 42 U.S.C. §1396d(q)(2)(B), under which disabled working individuals may be eligible for medical assistance. While HHSC appreciates the concern that was presented, there is no authority that allows the SSI spouse the same Medicaid Buy-In (MBI) opportunity, when the spouse is denied SSI due to deemed income from a working spouse. Individuals eligible for MBI must be employed. The proposed rule provides that if a person lives with a spouse, the person and spouse are each considered a household of one. The assets of each spouse are considered only with respect to that spouse.

Comment: ARCIL commented that significant numbers of individuals apply for Social Security benefits and are denied because of work income. Often, the Social Security Administration (SSA) makes this decision before initiation or completion of a determination of medical eligibility. The Medicaid Buy-In rules, and corresponding amendments to the Medicaid State Plan, should contain provisions for a process to identify these individuals and make them aware of the buy-in option. An agreement with SSA could allow access to medical information that has already been collected.

Response: HHSC disagrees with the comment and has made no changes to the rule language. In response to the comment, the proposed rule provides no requirement that the individual must at one time have been an SSI recipient to be eligible under this provision. However, if the individual was not an SSI recipient, a disability determination is made by HHSC to ensure that the individual would meet the eligibility requirements for SSI, except that the requirement that the person be unable to engage in any substantial gainful activity does not apply. Outreach efforts are currently being finalized so that individuals will be aware of the buy-in option.

Comment: HHSC received a comment from the National Multiple Sclerosis Society (NMSS) concerning §358.817. NMSS recommends deleting "after written notice, HHSC may terminate the person's MCI eligibility" from the rule and replacing it with "the person may make installment payments on the missed premium, distributed evenly over a course of 90 days, in addition to their usual monthly premium. If the first installment payment is not received by HHSC in the second month, HHSC may suspend the person's MBI coverage after written notice."

Response: HHSC acknowledges the comment received from the National Multiple Sclerosis Society. While HHSC appreciates the concern that was presented, MBI members are allowed to use funds from their Independence and PASS accounts to pay premiums in any month that lacks sufficient income. No change was made to the rule in response to this recommendation.

The new rules are adopted under the authority granted to HHSC by §531.033, Government Code, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §32.021(a), Human Resources Code, and §531.021(a), Government Code, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and §531.02444, Government Code, which provides HHSC the authority to implement a Medicaid Buy-In program for certain persons with disabilities.

§358.817. Cost Sharing.

(a) As a condition of establishing initial MBI eligibility and to remain eligible, a person is required to pay monthly premiums, as explained in this section, based on the amount of the person's countable earned and countable unearned income.

(b) For purposes of this section, countable earned income is as defined in 20 CFR §§416.1110 and 416.1111, minus:

(1) earned income that is excluded by federal law, as explained in 20 CFR §416.1112(b); and

(2) mandatory payroll deductions for federal income tax, FICA, and retirement withholding.

(c) For purposes of this section, countable unearned income means unearned income, as defined in 20 CFR §§416.1120 - 416.1123, minus the exclusions and exemptions explained in 20 CFR §416.1124.

(d) The monthly premium amount equals:

(1) the amount of a person's countable unearned income for the month that exceeds the Federal Benefit Rate for SSI for an individual; plus

(2) a flat fee amount, not to exceed $50, that is based on the amount of the person's countable earned income for the month whenever it exceeds 150% of the Federal Poverty Limit (FPL).

(e) Payment of monthly premiums to establish initial eligibility. The initial eligibility period begins with the earliest date of potential eligibility and continues through the end of the month after which HHSC sends to the person a written notice of the person's potential eli-

gibility. This subsection explains the procedures that are followed and the requirements the person must meet in order for the person to establish eligibility under this section for any or all of the months within the initial eligibility period. The steps are as follows:

(1) HHSC determines that the person is potentially eligible because the person meets all eligibility requirements for MBI other than the requirements of this section;

(2) HHSC sends to the person a written notice of the person's potential eligibility (the notice). The notice explains the earliest month of potential eligibility and the amount of each of the monthly premiums due for each month in the initial eligibility period;

(3) The notice also includes:

(A) the total amount in monthly premiums that must be paid to obtain MBI coverage for the entire initial eligibility period; and

(B) the deadline by which payment must be submitted.

(4) The person chooses whether to pay the monthly premiums for either the entire initial eligibility period or for only a portion of the initial eligibility period (according to the months during which the person desires MBI coverage);

(5) The person submits to HHSC, by the deadline stated in the notice either the total amount due as explained in the notice, or a lesser amount if the person is not seeking coverage for the entire initial eligibility period.

(6) If the person submits payment of less than the total amount due to obtain MBI coverage for the entire initial eligibility period, HHSC applies the amount submitted first to satisfy the monthly premium for the month following the month of the notice, then to each prior month of potential eligibility, in reverse chronological order. After this, if any amount remaining is less than the premium for a full month's coverage, HHSC will refund that amount to the person;

(7) HHSC notifies the person of MBI eligibility and of the beginning date of MBI coverage, based on the amount submitted by the person under paragraph (5) of this subsection.

(8) If no amount is submitted by the deadline stated in the notice, or if the amount submitted is less than one month's premium such that it is refunded to the person as explained in paragraph (6) of this subsection, HHSC denies the person MBI eligibility. A person denied under this paragraph is required to file a new application for MBI before eligibility can be established.

(f) Payment of monthly premiums after initial eligibility. Monthly premiums after a person establishes initial eligibility under subsection (e) of this section are due and payable to HHSC no later than the last calendar day of each month, and are applied to the following month's eligibility and coverage of MBI benefits. If a monthly premium payment that is due is not received by HHSC by the end of the month, after written notice, HHSC may terminate the person's MBI eligibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1004

The Credit Union Commission adopts the repeal of §91.1004, concerning conversion of charter. The repeal is adopted without changes to the proposal as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1552).

This rule is being replaced by §§91.1005, 91.1006, 91.007, and 91.1008 which update the rule and divide the rule into four distinct rules for ease of use and clarity.

No written or oral comments were received on the proposed repeal.

The repeal is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123.003, which allows a credit union to engage in any activity or exercise any power it could if it were operating as a federal credit union; §122.201, which authorizes the Commission to adopt rules regarding conversions to a federal credit union; §122.202, which authorizes the Commission to adopt rules regarding conversions to an out-of-state credit union; and §122.203, which authorizes the Commission to adopt rules regarding conversions to a state credit union.

The specific sections affected by the repeal are Texas Finance Code, §§123.003, 122.201, 122.202, and 122.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.1005

The Credit Union Commission adopts new §91.1005, concerning conversion to a Texas credit union, with no changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1553).

The new rule updates and replaces a portion of §91.1004, concerning conversion of charter. Recently there had been some controversy surrounding two credit union conversions to mutual savings institutions, and the Commission's Legislative Advisory Committee directed the Department to seek input from interested parties and develop a more comprehensive and reasoned proposal regarding charter conversions. The Department participated in six private meetings with over 50 credit union presidents, conducted a public forum for credit unions and their members, and held a public hearing for all interested persons. Section 91.1004 addressed five different types of conversions. The Commission believes that greater clarity and ease of use could be achieved if the existing §91.1004 were separated into four distinct rules. Accordingly, new §91.1005 is being adopted to deal exclusively with conversions to a state credit union.

Written comments in support of the proposal were received from Suzanne Yashewski on behalf of the Texas Credit Union League. No oral comments were received on the proposal.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.203, which authorizes the Commission to adopt rules regarding conversions to a state credit union.

The specific section affected by the new rule is Texas Finance Code, §122.203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.1006

The Credit Union Commission adopts new §91.1006, concerning conversion to a federal or out-of-state credit union, with no changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1554).

The new rule updates and replaces a portion of §91.1004, concerning conversion of charter. Recently there had been some controversy surrounding two credit union conversions to mutual savings institutions, and the Commission's Legislative Advisory Committee directed the Department to seek input from interested parties and develop a more comprehensive and reasoned proposal regarding charter conversions. The Department participated in six private meetings with over 50 credit union presidents, conducted a public forum for credit unions and their members, and held a public hearing for all interested persons. Section 91.1004 addressed five different types of conversions. The Commission believes that greater clarity and ease of use could be achieved if the existing §91.1004 were separated into four distinct rules. Accordingly, new §91.1006 is being adopted to deal exclusively with conversions to a federal or out-of-state credit union.

Written comments in support of the proposal were received from Suzanne Yashewski on behalf of the Texas Credit Union League. No oral comments were received on the proposal.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §122.201, which authorizes the Commission to adopt rules regarding conversions to a federal credit union; and §122.202, which authorizes the Commission to adopt rules regarding conversions to an out-of-state credit union.

The specific sections affected by the new rule are Texas Finance Code, §122.201 and §122.202.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.1007

The Credit Union Commission adopts new §91.1007, concerning conversion to a mutual savings institution, with no changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1555).

The new rule updates and replaces a portion of §91.1004, concerning conversion of charter. Recently there had been some controversy surrounding two credit union conversions to mutual savings institutions, and the Commission's Legislative Advisory Committee directed the Department to seek input from interested parties and develop a more comprehensive and reasoned proposal regarding charter conversions. The Department participated in six private meetings with over 50 credit union presidents, conducted a public forum for credit unions and their members, and held a public hearing for all interested persons. Section 91.1004 addressed five different types of conversions. The Commission believes that greater clarity and ease of use could be achieved if the existing §91.1004 were separated into four distinct rules. Accordingly, new §91.1007 is being adopted to deal exclusively with conversions to a mutual savings institution.

New §91.1007 adds a requirement that the credit union provide members with certain information about a conversion to a mutual savings institution and give them an opportunity to provide comments prior to the credit union board's final vote on a conversion

proposal. The new rule also increases the adoption threshold of the board of directors for a conversion proposal from a majority to two-thirds vote.

Written comments generally in support of the proposal were received from Suzanne Yashewski, on behalf of the Texas Credit Union League, and Leon Ewing, on behalf of FirstMark Credit Union. Written comments against the proposal were received from John Lederer, as an individual, and Robert L. Freedman on behalf of Silver, Freedman & Taft, L.L.P. No oral comments were received on the proposal.

One commenter stated that the requirement to post the information about the conversion proposal on the credit union's website should be expanded to require that it be posted "in a prominent position on the website." The Commission reviewed the provision and thought that it was adequate as written and declined to make the suggested revision.

One commenter stated that he did not believe the Commission had the authority to adopt a rule regulating conversions to mutual savings institution under §123.003 (the parity provision) of the Texas Credit Union Act which requires additional disclosures not required by the National Credit Union Administration (NCUA) rules. The commenter also claimed that the Commission does not have the authority to require more than a majority vote of the board of directors to propose a conversion since the Federal Credit Union Act and the NCUA rules require only a majority vote for federal credit unions.

The Commission disagrees with this commenter. Although §123.003 provides credit unions with some very important competitive flexibility, it is not wholly unlimited and must be read in conjunction with the rest of the Texas Credit Union Act, particularly §§15.102, 15.402, 121.0011 and 121.004. The Legislature has clearly bestowed upon the Commission the power to regulate credit unions, and there is no discernable intention on the part of the Legislature to strip the Commission of authority it has traditionally exercised in all other forms of corporate restructuring. Consequently, it is inappropriate to construe that the purpose of §123.003 is to limit, in any way, the authority of the Commission to reasonably regulate the method or manner by which a credit union exercises its rights and privileges if the rules are adopted after due consideration of the factors listed in §15.402. Accordingly, the Commission maintains that the Texas Credit Union Act gives the Commission sufficient authority to provide a system of state regulation that differs from the regulatory scheme imposed on federal credit unions under federal law.

Two commenters stated that requiring an additional disclosure over and above the three disclosures currently required by the NCUA, would cause the credit union to incur additional expense and "create more member confusion" because the disclosure required by the new rule might be different from NCUA's required disclosures. One commenter went on further to say that if proposed §91.1008 were adopted, it would also "require full [NCUA] disclosures, not partial [as set out in the proposed rule], would not ... be productive, and is merely an attempt by conversion opponents to have more time to attack an already lengthy and over regulated process."

Two other commenters applauded the new rule's requirement of early notice to members that the board is considering a conversion. "It is important that members have the opportunity to voice their opinions to the board early in the process." "It is important that members are notified of a possible conversion prior to the final vote of the board. This allows board members time necessary to thoughtfully consider member's thoughts or concerns on the issue. I support the inclusion of a clear explanation of the differences between and similarities of a credit union and a mutual savings institution as well as plain language disclosures of material facts surrounding the conversion."

The Commission agrees that clear and concise disclosures to the members and an opportunity to be heard early in the process are beneficial and therefore declines to delete the provision requiring notice to members prior to a final vote on the conversion proposal. The Commission does not believe that credit unions will be required to give the full disclosure currently required by NCUA at this preliminary stage. NCUA's authority over the disclosure process becomes effective only after the board has voted to adopt a conversion proposal. In addition, the notice that is required by the new rule does not have to be sent in a separate mailing, adding additional expense. It can be sent electronically or included in monthly statements or newsletters.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123.003, which allows a credit union to engage in any activity or exercise any power it could if it were operating as a federal credit union.

The specific section affected by the new rule is Texas Finance Code, §123.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.1008

The Credit Union Commission adopts new §91.1008, concerning conversion voting procedures and restrictions; filing requirements, with no changes to the text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1556).

The new rule updates and replaces a portion of §91.1004, concerning conversion of charter. Recently there had been some controversy surrounding two credit union conversions to mutual savings institutions, and the Commission's Legislative Advisory Committee directed the Department to seek input from interested parties and develop a more comprehensive and reasoned proposal regarding charter conversions. The Department participated in six private meetings with over 50 credit union presidents, conducted a public forum for credit unions and their members, and held a public hearing for all interested persons. Section 91.1004 addressed five different types of conversions. The Commission believes that greater clarity and ease of use could be achieved if the existing §91.1004 were separated into four distinct rules. Accordingly, new §91.1008 is being adopted to ad-

dress the vote procedures, restrictions, and filing requirements for all conversions.

New §91.1008 specifies that the ballot must include certain information, including a statement that a "yes" vote means that the credit union will become [insert conversion entity type] and a "no" vote means it will stay a credit union. The new rule also adds a vote certification requirement.

Written comments generally in support of the proposal were received from Suzanne Yashewski, on behalf of the Texas Credit Union League, and Leon Ewing, on behalf of FirstMark Credit Union. Written comments against the proposal were received from John Lederer, as an individual. No oral comments were received on the proposal.

One commenter stated that the new rule should include a provision that "prohibits credit unions from using paid incentives to attract member votes." The Commission previously discussed this provision and declined to make the suggested revision because the incentives could encourage greater voter turnout and, if properly described in the disclosures, the benefit of having more members vote on the proposed conversion outweighed the detriment of the perception of possible swaying members' votes. It should be noted that the new rule is neutral on this issue and the board of each credit union desiring to convert can decide whether incentives to get more members to vote is the proper course of action for its credit union.

One commenter stated that he did not believe the Commission had the authority to adopt a rule regulating conversions to mutual savings institution under §123.003 (the parity provision) of the Texas Credit Union Act and that the National Credit Union Administration only had that authority. He suggested that a provision should be added to the new rule that, in regards to votes on conversions to a mutual savings institution, "compliance with NCUA's voting procedures constitutes full compliance with the requirements of the state rule."

The Commission disagrees with this commenter. Although §123.003 provides credit unions with some very important competitive flexibility, it is not wholly unlimited and must be read in conjunction with the rest of the Texas Credit Union Act, particularly §§15.102, 15.402, 121.0011 and 121.004. The Legislature has clearly bestowed upon the Commission the power to regulate credit unions, and there is no discernable intention on the part of the Legislature to strip the Commission of authority it has traditionally exercised in all other forms of corporate restructuring. Consequently, it is inappropriate to construe that the purpose of §123.003 is to limit, in any way, the authority of the Commission to reasonably regulate the method or manner by which a credit union exercises its rights and privileges if the rules are adopted after due consideration of the factors listed in §15.402. Accordingly, the Commission maintains that the Texas Credit Union Act gives the Commission sufficient authority to provide a system of state regulation that differs from the regulatory scheme imposed on federal credit unions under federal law.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123.003, which allows a credit union to engage in any activity or exercise any power it could if it were operating as a federal credit union; §122.201, which authorizes the Commission to adopt rules regarding conversions to a federal credit union; §122.202, which authorizes the Commission to adopt rules regarding conversions to an out-of-state credit union; and 122.203, which authorizes the Commission to adopt rules regarding conversions to a state credit union.

The specific sections affected by the new rule are Texas Finance Code, §§122.201, 122.202, 122.203, and 123.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
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CHAPTER 93. ADMINISTRATIVE PROCEEDINGS
SUBCHAPTER B. GENERAL RULES

7 TAC §93.214

The Credit Union Commission adopts a new §93.214 concerning recovery of Department costs, without changes to the text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1557).

The new rule authorizes the Administrative Law Judge to allocate the costs of an administrative hearing among the parties. The Commission believes that there is a need for a rule to more equitably allocate the costs of an administrative hearing. Currently, with the exception of the costs for transcribing the hearing and preparing the original transcript, the Department and the State must cover the expenses incurred in conducting the hearing. Since the Department does not receive appropriations to pay these costs, the new rule authorizes the Administrative Law Judge to determine an appropriate allocation of costs among the parties.

No written or oral comments were received on the proposal.

The new rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the new rule are Texas Finance Code, §§122.006, 122.007, 122.153, 122.259, 126.105.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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SUBCHAPTER C. APPEALS OF PRELIMINARY DETERMINATIONS ON APPLICATIONS

7 TAC §93.301

The Credit Union Commission adopts an amendment to §93.301, concerning finality and request for SOAH hearing, with changes to the text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558).

The amendment adds a provision which makes the Commissioner's preliminary decision final where there is no modification and no protest or comment was received on the application.

No written or oral comments were received on the proposal.

The amendment is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the amendment are Texas Finance Code, §§122.006, 122.007, 122.153, 122.259, 126.105.

§93.301. Finality and Request for SOAH Hearing.

(a) Except as provided otherwise by this chapter, the preliminary decision of the commissioner becomes final 20 days from the date of service, unless prior thereto, an applicant or protestant files with the commissioner a written request for hearing. In the event that a timely written request for hearing is filed by any party, the commissioner's preliminary decision is withdrawn. The commissioner may, at the commissioner's sole discretion, refer any matter to SOAH for hearing prior to entering a preliminary decision.

(b) Notwithstanding subsection (a) of this section, if an application is approved without modification and neither a protest or comment was received during the notice period, the commissioner, in the exercise of discretion, may determine that the preliminary decision should become final upon the issuance of the preliminary decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 153. HOME EQUITY LENDING

7 TAC §§153.13, 153.18, 153.20

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly adopt the repeal of §§153.13, 153.18, and 153.20 relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6). The commissions have proposed changes to these interpretations in the form of new interpretations which appeared in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1393). Therefore, the repeal of these interpretations is adopted without changes to the proposal published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1393).

The commissions received no written comments on the repeal proposal of these interpretations.

The interpretation repeals are adopted pursuant to Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), which separately and independently authorize each Commission to issue interpretations of the Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6) is affected by the adopted interpretations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603138
Leslie Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Effective date: June 29, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 936-7622

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7 TAC §§153.13, 153.18, 153.20

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly adopt new interpretations §§153.13, 153.18, and 153.20 relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6). Existing companion interpretations §§153.13, 153.18, and 153.20 are repealed in this issue of the *Texas Register*. The interpretations are adopted with non-substantive changes to the proposal as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1393).

The commissions received ten written comments on the proposed new interpretations. The following commenters generally supported adoption, but also requested clarifications or recommended modifications: Karen Neeley on behalf of Independent Bankers Association of Texas; John Heasley on behalf of Texas Bankers Association; Suzanne Yashewski on behalf of Texas Credit Union League; Eric Sandberg on behalf of Texas Savings and Community Bankers Association; Larry Temple on behalf of Texas Mortgage Bankers Association; and Lorena Rush

of Wells Fargo & Company. The following commenters only requested clarifications or recommended modifications: David F. Dulock, Attorney at law of Black, Mann & Graham, L.L.P.; Cherie A. Arruda of Bank of America; J. Alton Alsup of Brown, Fowler, Alsup, PC; Mark Morgan of JPMorgan Chase Bank; James L. Robertson, President of the Texas Association of Mortgage Attorneys; Doug Crowell of Wells Fargo Financial, Inc.; Ron Walker of Texas Association of Realtors; and Karen A. Schoenbucher of Southwest Bank.

No comments were received from individuals or any consumer advocacy organization.

Notice of a public meeting, for receipt of any oral comments on the proposed interpretations, was published in March 10, 2006, issue of the *Texas Register* (31 TexReg 1815). The meeting was held as scheduled, on April 6, 2006, but no one offered oral comments.

Texas Constitution, Article XVI, §50 (Section 50) limits the nature and type of liens that can be imposed on a Texas homestead by identifying and conditioning the specific purposes for which such secured financing may be used. Because of the significantly adverse consequences that can befall a lender who violates a provision of Section 50, clear and unambiguous guidance regarding the meaning of such provisions supports the stability of the credit markets and ensures that home equity loans are as widely available to Texas homeowners as possible. (Because Section 50 primarily addresses only the elements necessary to create a valid lien on a homestead, other statutes and constitutional provisions must also be consulted to fully evaluate the legality under Texas law of credit transactions involving the homestead.)

Concerns have been raised that several previously adopted interpretations are potentially ambiguous. The commissions are determined to address these concerns, and therefore jointly proposed to clarify these interpretations to better state the commissions' views.

Section 153.13

The Texas Constitution protects owners seeking home equity loans by requiring the lender to disclose to the owner all fees, costs, and charges associated with making the equity loan one day prior to closing (Section 50(a)(6)(M)(ii)). The one-day notice avoids surprise to the owner at closing and allows the owner time to reassess the equity loan if the associated costs of the loan are higher than expected. The Constitution recognizes that there are instances where it may be appropriate to make an exception to the one-day waiting period between the disclosure of fees and the closing of the equity loan. In practice, lenders may experience difficulty in accurately predicting the exact amount of costs incurred in making an equity loan that are outside of the lender's control. For example property tax accruals are often disclosed imprecisely. Determining accurate accruals is further complicated when a closing date changes. Delay in closing may also be detrimental to the borrower. For these reasons the Constitution allows the owner to consent to a modified disclosure or receipt of a disclosure on the date of closing. This may occur if a bona fide emergency or other good cause exists and the owner concludes that the best alternative is to waive the one-day waiting period.

The commissions interpreted Section 50(a)(6)(M)(ii) by adopting existing §153.13 to clarify the terms "bona fide emergency" and "other good cause" in a way that preserves the constitutional protections for the owner without subjecting the owner to unnecessary regulatory burdens. The commissions developed existing §153.13 in light of the existing Texas law that recognizes the principles of reasonableness, wisdom, and common sense.

Although the commissions believe existing §153.13 is a valid and consistent interpretation of §50(a)(6)(M)(ii), concerns were raised that this interpretation could allow for a substantial increase in *total* closing costs if *each* fee increases by a small amount. Theoretical concerns were also raised that this interpretation could inadvertently allow for any fee to increase so long as one fee decreases. Following the case *In Re Box*, 342 B.R. 290 (Bankr. S.D. Tex. 2005) (holding that a signed document alone was not sufficient to evidence owner consent), lenders may need to further document an owner's consent. Therefore, the commissions are repealing existing §153.13 and adopting new §153.13.

Seven written comments were received on this proposed new interpretation making specific suggestions to modify the language or clarify concepts. The commissions made non-substantive changes to clarify and simplify the addressed provisions as the result of comments.

Adopted new §153.13 clarifies "bona fide emergency" and "other good cause" by setting out principles and examples for these terms. The commissions base the interpretation of the term "bona fide emergency" on the meaning and use of that phrase in 12 C.F.R. Part 226 (Regulation Z). Under this interpretation, only a significant emergency qualifies as a bona fide emergency. The commissions base the definition of good cause on both the common meaning and the legal definition of that term; however, because the definition of this term could be construed broadly, the commissions offer additional guidance for owners and lenders under this standard. The examples provided to illustrate good cause are not intended to be exclusive.

One commenter suggested that an owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists. Good cause to receive the preclosing disclosure or a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner. The commissions agree with the commenter, but believe this to be self-evident from the current language of the constitution. No changes have been made in response to this comment.

One commenter was concerned that the language of proposed §153.13 appeared to allow the borrower to accept only a modification of the preclosing disclosure statement in the case of either a "bona fide emergency or other good cause." The commenter interpreted the language of the proposed interpretation to limit the owner's ability to consent to receipt of the preclosing disclosure on the date of closing only to cases of "bona fide emergency" (but not "other good cause.")

The commissions reviewed the language in question and agreed with the commenter. The commissions modified the language as suggested by the commenter. The revised language also improves internal consistency of the language of §153.13.

The commissions' interpretation further offers a presumption that a de minimis increase in the costs, fees, and charges may qualify as good cause with the owner's consent. The commissions base this presumption on the doctrine of de minimis non curat lex--the law does not concern itself with very small or trifling matters. The doctrine is well established in Texas law and has been applied in the context of consumer credit cases *Gawlik v. Padre Staples Auto Mart, Inc.*, 666 S.W.2d 161 (Tex. App. - Corpus Christi 1983, writ ref'd n.r.e); *HSAM, Inc. v. Gatter*, 814 S.W.2d 887 (Tex. App. - San Antonio 1991, writ dism'd by agr.).

This doctrine protects the parties where the variance between the disclosures is minute. It seems unlikely that a law designed to protect an owner would *require* an owner to postpone a closing because of very small variances from previously disclosed costs, especially when the owner desires to proceed with closing. The commissions articulate the boundaries of the de minimis presumption in §153.13. The interpretation is analogous to the standards of accuracy for disclosure in 12 C.F.R. §226.22(a)(2) (Regulation Z), which provides that the disclosed charges are treated as accurate if the amount "is not more than 1/8 of 1 percentage point above or below" the disclosed amount. In the interpretation the de minimis threshold is set at 1/8 of 1 percent of the principal amount of the loan. On an equity loan with an $80,000 principal amount, the 1/8 of 1 percent threshold would be $100. Occasionally, unanticipated additional fees arise in an equity loan transaction shortly before closing. For example, the invoice for a courier or delivery fee may not arrive in time for the preclosing disclosure, and including the fee in the final documents could force a delay in closing the equity loan. This provision recognizes that postponing the date of closing may adversely affect the owner more than the amount of variance between disclosed and actual closing costs. It also allows the owner to decide if hardship would result from postponing the closing for de minimis variances in costs. Additionally, adopted new §153.13 would allow the lender to reduce fees or closing costs by any amount without postponing the date of closing.

Adopted new §153.13 lists the types of fees charged at closing that must be disclosed to the owner. These are "actual fees, points, interests, costs, and charges." The commissions use the word points as described in Texas law: points are prepaid interest and points are the types of prepaid interest that are charged at closing. The interest rate that is contracted to be charged on the principal amount of the loan transaction is not considered interest charged at closing.

One commenter noted that the word "interest" appeared to be missing from (2)(B)(iv), (3)(B)(iii) and (iv), and (3)(C)(iv), and (4)(A). The commenter implied that by not including the word "interest," the commissions had failed to fully interpret §50(a)(6)(M)(ii), which includes that word.

The commissions have reviewed §153.13 and have concluded that the word "points" encompasses the concept of interest and is well-defined in Texas law. The commissions have determined that the addition of the word "interest" would not add further clarity to the interpretation. The commissions believe that the use of the word "points" fully addresses the concept of interest in §50(a)(6)(M)(ii).

One commenter requested clarification that payoffs of the homeowner's existing debts are not "fees. . .and charges" that must be disclosed under this interpretation. The commenter also stated that these payoffs are covered by a HUD-1 Settlement Statement and disclosed in accordance with RESPA requirements, and are therefore outside of the scope of §153.13.

The commissions agree with the commenter, but believe this to be self-evident from the current language of §153.13. No changes have been made in response to this comment.

One commenter also suggested that "fees, points, interest, costs, and charges" for the purpose of disclosure do not include amounts paid by the lender to third-party service providers outside of closing or amounts required to be paid by the owner to other creditors to payoff and discharge existing liens on the homestead or unsecured debts that are to be consolidated by the equity loan even if itemized on the Form HUD-1 or HUD-1A settlement statements. The commissions do not believe the commenter's suggested change is necessary because the Constitution requires the disclosure of the actual fees, points, interest, costs and charges to the borrower as the result of making the home equity loan. Only the costs and charges that will be charged at the closing of the home equity loan are required to be included in the disclosure. No further interpretation is required. In practice, payoff amounts to creditors would generally be included in this disclosure if they are being paid directly through closing with loan proceeds.

Adopted new §153.13 also protects lenders and owners by offering additional guidelines to address the documentation that should be obtained to support an emergency or other good cause modification. The commissions intend the documentation requirement to ensure true informed consent on the part of the owner and that the standard of a bona fide emergency or other good cause has been met.

Two commenters agreed with the general concept of the de minimis standard of good cause embodied in §153.13. It has become an important safe harbor for lenders as well as a way to empower consumers to decide if a very small difference between previously disclosed and actual costs should merit postponement of the closing date for their loans.

Seven commenters suggested that because the doctrine of "de minimis non curat lex" protects the parties where the variance between the disclosures is minute, it is unnecessary to have the additional requirements that involve a material adverse financial consequence and an adverse consequence to the good cause standard. Two commenters challenged the language of §153.13(B)(v)(I) and (II) which appeared to require determinations of whether fees were unanticipated or accidental, and whether a lender had control systems in place to prevent errors. The commenters suggested that these determinations would be too fact specific to make with certainty. The commenters recommended that the interpretation be revised to eliminate this language and require the lender only to meet the tolerance provisions of (B)(iii) and the materiality standard of (B)(i).

Five commenters recommended that subsection (3)(B)(v)(II) be revised to be an independent de minimis good cause standard. These commenters also recommended that the $100 floor for a de minimis good cause standard be reinstated because it would be consistent with the tolerance in §226.18(d)(1)(i) of Regulation Z for disclosure of the finance charge and is found in the existing interpretation.

The commissions have reviewed §153.13 and agree with the commenters. The commissions have omitted §153.13(B)(v)(I) and (II) as unnecessary in light of the de minimis good cause standard established in §153.13(B)(i) - (iv) and maintain the $100 floor that is found in the existing interpretation.

Two commenters agreed with the statement in the proposed preamble to §153.13 that would allow the lender to reduce fees or closing costs by any amount without postponing the date of closing. However, one commenter was concerned that with the removal of subsection (4)(B), there would be no express interpretative authority as to the effect of a decrease in fees or closing costs. The commenter recommended that the commissions add an interpretive statement to §153.13 saying that a reduction in one or more fees or closing costs by any amount is permissible without the owner's consent, does not require compliance with

the bona fide emergency or good cause requirements, and will not postpone the date of closing.

While the commissions agree with the commenters' statements that a reduction in fees would not trigger the need for an owner's consent to forego a delay in the closing date, the commissions conclude that this is self-evident from the language of the interpretation. A small increase in cost clearly must be analyzed to determine whether it meets the requirements of the de minimis good cause standard (including owner consent to receipt of the preclosing disclosure or a modified disclosure on the same day as the closing). Although a strict reading of the language of the Constitution would also require this analysis in the case of cost reductions, it would be absurd to do so. Reduced costs benefit the borrower, so no analysis of a change that lowers loan costs is necessary to protect their interests. The addition of language stating this in the body of the §153.13 would serve no purpose, therefore the commissions decline to follow the commenter's suggestion.

Two commenters noted that the word "de minimis" was also spelled "de minimus" in the text of proposed §153.13. In response to these comments, the commissions have changed the spelling to consistently spell the word as "de minimis."

One commenter noted that the de minimis good cause standard is applicable only when there is a difference between the preclosing disclosure and the closing disclosure. Therefore, subsection (3)(C)(ii) would not be applicable to a de minimis good cause standard. The commenter recommended that the subsection be revised to read, "(ii) specifically states that the owner consents to receive *a subsequent or modified preclosing* disclosure on the date of closing." The commissions agree with the commenter and modified the language of §153.13 as suggested. This modification clarifies the application of subsection (3)(C)(ii), as well as improving the internal consistency of the interpretation.

Three commenters requested that "normal business hours" be more completely defined. One commenter recommended that "normal business hours" be defined as those of the closing office conducting the closing in accordance with §153.15(1) of the interpretations. One commenter also recommended clarification that the restriction of closing to "normal business hours" would only apply if the closing was conducted on the first business day after disclosure, not if the closing was conducted on any business day thereafter. The commissions have reviewed the concept of "normal business hours" in the context of §153.13 and decline to modify the interpretation. What constitutes normal business hours is a fact-specific question. This issue is most appropriately raised in a court of law, and is not the subject of the commissions' interpretations.

Section 153.18

Section 50(a)(6)(Q)(i) of the Constitution provides that an owner can not be required to apply the proceeds of an equity loan to repay another debt except debt secured by the homestead or debt to another lender. The commissions proposed a new interpretation regarding this constitutional provision which deleted a prior subsection stating that this restriction did not apply when an owner applied to her current lender for a debt consolidation loan. This provision was deleted due to a current court case which held that even though the owner applied for a debt consolidation loan, and signed documents that he voluntarily applied for the loan, that doesn't mean that the lender did not require that the home equity loan be used to repay debts owed to that same lender. The proposed interpretation also reversed the order of the first two paragraphs to better stress the importance of the lender prohibition and a sentence was added to the second paragraph clarifying that whether the act of the owner was voluntary when paying off debt owed to the home equity lender was a fact question.

The commissions received seven comment letters on this proposed interpretation. Two of the commenters felt that the deleted provision regarding debt consolidation should be reinstated because, among other things, *In Re Box*, 324 B.R. 290 (Bankr. S.D. Tex. 2005) did not apply. Both argued that the loan in the *In Re Box* case was closed prior to the interpretation being adopted and is not binding on the commission. "Unless the commissions are independently persuaded by the analysis of that federal court, they should not discard an interpretation they had carefully created after extensive public comment until after a court from the state of Texas has reached a similar conclusion." In the alternative, these same commenters requested that the commissions allow a written affidavit by the owner to be prima facia evidence that she acted voluntarily in paying off debt to the home equity lender. Three additional commenters also requested that the commissions set forth criteria for an affidavit or "some indicia of voluntariness" "that would lead a fact finder toward a conclusion that a given situation evidences independent free will. . ."

The commenters set forth mostly policy arguments in support of their requested revisions: "The proposed interpretation would make it virtually impossible for any owner to obtain a debt consolidation loan from her own lender. At the same time, it does not effectively protect the homestead from undue burden because any lender can pressure the owner to consolidate other debt." "Very few borrowers who wish to consolidate debt have sufficient income to pay both the debt they wish to consolidate AND a new loan or line (of credit) in the same amount; therefore (financial institutions) would be forced to turn down the consumer's request. As a result, her only option would be to go to another lender, with whom she does not have a relationship." "Under this interpretation, a lender should absolutely never consider that proceeds of the loan would be used to pay off debt to it. Unfortunately for the owner, this impacts the underwriting. It may increase the cost of credit to a borrower who is excessively leveraged."

The court's analysis in *In Re Box* demonstrated to the commissions that whether the borrower's repayment of debt to the home equity lender was voluntary, turned on fact questions. There could be many different scenarios and many different facts for each case and there is no way that an interpretation by the commissions could encompass or anticipate all of them. Further, a United States District Court for the Southern District of Texas recently affirmed the court's decision in *In Re Box* (2006 WL 626219 (S.D.Tex.)), and, since the date of the publication of the proposed new §153.18, a District Court in Travis County, Texas has ruled that the debt consolidation exception set out in existing §153.18(3) is invalid.

Although the commissions understand the policy arguments made by the lenders and that there are situations where debt consolidation with the same lender could be beneficial to the owner, the commissions do not believe their interpretative authority extends to creating evidentiary guidelines for the courts. The United States District Court in affirming the *In Re Box* case stated, "The result reached in this case is based on the literal text and plain language of the constitutional provision at issue. The Bank's policy arguments are best addressed by revising the text and language, which cannot be done by federal bankruptcy or district courts." The Commission's interpretative

authority is likewise limited. Therefore, the commissions decline to reinstate the debt consolidation provision or to provide criteria for an affidavit which evidences "voluntariness."

Another commenter pointed out that the last sentence added to subsection (2) stating that whether the owner's act is voluntary is a question of fact, should be deleted since it "adds nothing to the interpretation, except to state the obvious and it may invite legal challenges to voluntary payments." The commissions agree with this comment and have deleted the last sentence of subsection (2).

Two commenters suggested that the last sentence of subsection (1), "The lender may not otherwise specify or restrict the use of the proceeds" should be deleted. Both commenters questioned whether the constitution supports this restriction as "there are situations, such as the payoff of contractors and subcontractors who have lien rights, where the lender will legally be in a position to specify the use of proceeds." The same reasoning could be used if an owner applied for a home equity loan to pay off a medical or educational debt. The commissions agree with this comment and have deleted the last sentence of subsection (1). In addition, to be consistent, the commissions have revised the first sentence of subsection (2) from "An owner may use the proceeds of an equity loan for any purpose" to "An owner may apply for an equity loan for any purpose." The commissions believe that these revisions provide an interpretation that is closer to the plain language reading of the applicable constitutional provision.

Section 153.20

Adopted new §153.20 defines the term "instrument," and revises the interpretation to more clearly identify what blanks constitute "blanks left to be filled in" as that phrase is used in the Constitution. The interpretation defines instrument to mean a document that creates or alters an obligation of a party to an equity loan. A required disclosure is not an instrument if the disclosure does not create or alter the obligation of a party. The interpretation further provides that when the selection of one of several options constitutes by implication the exclusion of the non-selected options, the instrument does not contain blanks to be filled in when the non-selected option is left blank.

One commenter submitted a comment which was also adopted by referenced by another commenter. The commenter pointed out that the proposed interpretation contained a potential ambiguity in subsection (b) because in the first sentence "instrument" is defined as "a document or record which creates a legal obligation of an owner," but in the second sentence a disclosure is excluded "if the disclosure does not create or alter a legal obligation of a party." The commissions agree that the two sentences should be harmonized, and therefore revised the section so that both phrases read "create or alter a legal obligation of a party." The commenter further suggested language that the definition of instrument should be limited to those documents which create or alter the legal obligation of an owner in favor of an originator or lender. The commissions believe that this language is too narrow and that the term "instrument" should include all documents or records in which a legal obligation of either the consumer or the lender or originator is created or altered.

One commenter suggested that the proposed definition substitute the words "define" or "describe" a legal obligation for the phrase "create or alter." The commenter further opined that the proposed definition inappropriately relied on the description of instrument as used in Finance Code §342.454. The commenter further suggested that by excluding disclosures there could be the inadvertent consequence of excusing a lender from failing to properly complete a disclosure. The commissions disagree. Whether or not a lender has properly completed disclosures is a matter controlled by the specific statutory and regulatory provisions governing the disclosure.

It would be inappropriate for the commissions to adopt an interpretation that would potentially be in conflict with the specific requirements relating to the disclosures. This is especially so for those disclosures required under federal law. The commissions continue to believe that the proposed definition most closely aligns with the term "instrument" as that term is used in statutory provisions under Texas law.

The commissions have made non-substantive grammatical changes to the proposed interpretation and have also substituted numerals for letters to identify subsections.

Each commission is separately and independently authorized to issue interpretations of the provisions in Section 50, see Texas Finance Code, §11.308 and §15.413 (as added by Acts 2003, 78th Legislature, Chapter 1207, §2), and the Texas Constitution, Article XVI, §50(u). The commissions seek to jointly exercise their authority to interpret Section 50 in order to promote consistency and better support the confidence of homeowners and lenders transacting home equity loans in compliance with Section 50. In addition, the commissions interpret the extent of their interpretive authority to include not only determinations of the explicit meaning of words and terms in Section 50, but also to encompass "filling in the gaps" with respect to material matters that are inadequately addressed in Section 50, including possible addition of further details to the extent the commissions believe this to be necessary to fully implement the intents and purposes of Section 50.

§153.13. Preclosing Disclosures: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(1) A lender may satisfy the disclosure requirement of this section by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(2) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document a bona fide emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all actual fees, points, costs, and charges one day prior to closing.

(3) Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) At the owner's election, a good cause to modify the preclosing disclosure may be established if:

(I) the modification does not create a material adverse financial consequence to the owner; or

(II) a delay in the closing would create an adverse consequence to the owner;

(iii) The term "de minimis" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimis good cause standard may be presumed if:

(i) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than the greater of $100 or 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a $80,000 principal loan amount equals $100) from the initial preclosing disclosure; or

(ii) each itemized fee, cost, point, or charge does not exceed more than the greater of $100 or 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(4) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(5) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

An equity loan must be made on the condition that the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender.

(1) The lender may not require an owner to repay a debt owed to the lender, unless it is a debt secured by the homestead. The lender may require debt secured by the homestead or debt to another lender or creditor be paid out of the proceeds of an equity loan.

(2) An owner may apply for an equity loan for any purpose. An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the equity loan.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

A home equity loan must be made on the condition that the owner of the homestead not sign any instrument in which blanks are left to be filled in.

(1) This Section of the Constitution prohibits the owner of the homestead from signing any instrument in which blanks are "left to be filled in". This Section is intended to prohibit a person other than the owner from completing one or more blanks in an instrument after the owner has signed the instrument and delivered it to the lender, thereby altering a party's obligation created in the instrument. Not all documents or records executed in connection with an equity loan are instruments, and not all blanks contained in an instrument are "blanks that are left to be filled in" as contemplated by this Section.

(2) As used in this Section, the term instrument means a document or record that creates or alters a legal obligation of a party. A disclosure required under state or federal law is not an instrument if the disclosure does not create or alter the obligation of a party.

(3) If at the time the owner signs an instrument, a blank is completed or box checked which indicates the owner's election to select one of multiple options offered (such as an election to select a fixed rate instead of an adjustable rate) and the owner therefore by implication has excluded the non-selected options, the instrument does not contain "blanks left to be filled in" when the non-selected option is left blank.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie Pettijohn
Commissioner
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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1, §255.11

The Office of Rural Community Affairs (Office) adopts amendments to §255.1 and §255.11, concerning general provisions,

eligible activities, selection procedures, and selection criteria required to receive Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). Sections 255.1 and 255.11 are adopted with changes to the text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8525).

The amendments add language to 10 TAC §255.1 and §255.11 to identify program years, specify additional ineligible activities, introduce additional threshold criteria, and present new selection criteria.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

§255.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Program TCDP funds in the format required by the Office or by the TDA for Texas Capital Fund TCF applications

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended, (42 United States Code §§5301 et seq.) and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Office, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office or the TDA has executed a contract.

(7) Office--The Office of Rural Community Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.

(17) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TCDP to eligible units of general local government in the following program areas:

(1) community development fund and community development supplemental fund;

(2) Texas Capital fund. The Texas Capital Fund TCF is administered by the TDA under an interagency agreement with the Office. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) Young v. Martinez fund (discontinued after 2003 program year);

(8) housing fund (discontinued after 2004 program year);

(9) small towns environment program fund;

(10) microenterprise fund (program income);

(11) small business fund (program income);

(12) section 108 loan guarantee pilot program;

(13) community development supplemental fund;

(14) non-border colonia fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TCDP fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP fund category.

(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP fund category.

(D) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TCDP application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TCDP fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TCDP requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (D) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TCDP. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TCDP.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TCDP application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TCDP contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TCDP funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TCDP, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCDP funds, and the use of past TCDP contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) The second public hearing for a housing infrastructure fund application must include a discussion with citizens on the proposed project, including the locations and the project activities, the amount of funds being requested, and the estimated amount of funds proposed for activities that will benefit low and moderate income persons. The published notice for this public hearing must include the location and hours when the application is available for review.

(G) Any public hearing held prior to submission of the application must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TCDP funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TCDP funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TCDP may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office staff and, in the case of TCF applications, by TDA staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office

and, in the case of TCF applications, by the TDA due to human or computer error.

(C) Other procedural error. The application is not processed by the Office and, in the case of TCF applications, by the TDA, in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TCDP of the Office no later than 30 days after the date the announcement of community development fund, community development supplemental fund and planning/capacity building fund contract awards is published in the *Texas Register.* In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director of the Office is final. If the appeal concerns a TCF application, the appeal must be submitted in writing to the TDA no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a disaster relief fund or urgent need fund application, the appeal must be submitted in writing to the Office no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, housing fund, colonia fund or Young v. Martinez fund application, the appeal must be submitted in writing to the Office no later than 30 days after the date the announcement of contract awards is published in the *Texas Register.* The staff of either the Office or the TDA, when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, TCF, housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) Appeals not submitted in accordance with this subsection are dismissed and may not be refiled.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TCDP:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TCDP contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Office's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Office regarding a request for repayment of funds to TCDP; or

(D) By not having at least one outstanding delinquent response to a written request from the Office regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TCDP contracts and any other Office contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Office.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the state review committee meets to review funding recommendations for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the executive director approves funding recommendations, or in the case of funding recommendations over $300,000, on the

date that the Executive Committee reviews the funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Legislative Budget Board for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Executive Committee for review and consideration.

(7) TCDP funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TCDP funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCDP funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TCDP contracts, unsatisfactory management and administration of previous TCDP contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TCDP contracts, the Office or TDA, in the case of the Texas Capital Fund application may determine that an applicant is ineligible to apply for TCDP funding even though at the application deadline date it meets the threshold and past performance requirements. The Office or TDA, in the case of the Texas Capital Fund applications will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office where the Office finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TCDP funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, colonia fund, disaster relief fund, housing fund, small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the executive director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TCDP funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TCDP funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households.

(5) A survey that was completed on or after January 1, 1993, or January 1, 1994, or January 1, 1995, for a previous TCDP application may be accepted by the Office for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Office for eligible TCDP activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TCDP Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office Executive Director, or when applicable, approved by the Office Executive Committee or by

the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the *Texas Register,* TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Office Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Office Executive Committee. Should the TCDP be required to make payments to HUD to cover any loan payments not made by any recipient of a TCDP Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Office may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Office finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Office shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Office. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TCDP funds awarded under an open TCDP contract within 12 months from the start date of the contract or prior to the application deadlines. This threshold is applicable to TCDP contracts with an original 24-month contract period. To meet this threshold, 50% of the TCDP funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TCDP contract activities do not have to be 50% completed, nor do 50% of the TCDP contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TCDP contracts under the community development fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(2) Submit to the Office the certificate of expenditures (COE) report showing the expended TCDP funds and a final drawdown for any remaining TCDP funds as required by the most recent edition of the TCDP Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TCDP staff. To meet this threshold "expended" means that the construction and services covered by the TCDP funds are complete and a drawdown for the TCDP funds has been submitted prior to the application deadlines. This threshold will apply to an open TCDP contract with an original 24-month contract period and to TCDP contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TCDP contracts under the community development fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microentreprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TCDP funds and a final drawdown for any remaining TCDP funds as required by the most recent edition of the TCDP Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TCDP staff. To meet this threshold "expended" means that the construction and services covered by the TCDP funds are complete and a drawdown for the TCDP funds has been submitted prior to the application deadlines. This threshold will apply to an open TCDP contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 26 months, and to TCDP contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TCDP contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 365 months. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microentreprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(o) State review committee. The committee shall consult with and advise the Office's executive director on the administration and enforcement policies of the TCDP; review funding recommendations for applicants under the community development fund, community development supplemental fund, and planning/capacity building fund and assist the Office's executive director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's executive director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's executive director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office to encourage minority employment and participation among all applicants under the TCDP. All applicants to the TCDP are required to sub-

mit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TCDP contract must meet the requirements for Revolving Loan Funds described in the TCDP Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TCDP contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office.

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TCDP's award letter to the applicant, the award will be immediately withdrawn by the TCDP (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Office's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Office.

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title.

(3) Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition are then subject to the procedures described in §255.1(l) of this title.

(4) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(5) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(6) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title.

(7) Funds recaptured under the housing infrastructure fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(8) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(9) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TCDP fund categories. Any unallo-

cated STEP funds are subject to the procedures described in §255.1(l) of this title.

(10) Funds recaptured under the microenterprise loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(11) Funds recaptured under the small business loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(12) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title.

(13) Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development supplemental fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title. This process would also apply to an application under the community development supplemental fund that received a portion of its funds from community development marginal funds. The community development marginal funds would be provided to the replacement application.

(14) For both the community development fund and community development supplemental fund (including applications funded with a portion from each of the two funds), if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in §255.1(l) of this title.

(15) Funds recaptured under the Non-border Colonia Fund from the withdrawal of an award remain available to potential Non-Border Colonia Fund applicants during that program year and, if unallocated within the non-border colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures described in §255.1(l) of this title.

(t) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(u) Performance measures. Each applicant for TCDP funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TCDP project implementation manual that is required by the Office to report on Community Development Block Grant program performance measures promulgated by the Executive Committee, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TCDP funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(w) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocated not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2005 and 2006 Community Development Fund/Community Development Supplemental Fund

grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 2006 grant award from this fund. However, the Office may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2005 or 2006 Community Development Fund/Community Development Supplemental Fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Equipment for installation of water or sewer if justification is provided.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TCDP. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TCDP will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted three times a year as long as funds are available. Funds will be divided among the three application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TCDP will not accept an application for STEP fund assistance until TCDP staff and representatives of the potential applicant have evaluated the self-help process and TCDP staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

(A) A strong local perception of the problem exists.

(B) The community has the perception that local implementation is the best and maybe only solution to the problem.

(C) The residents of the community have confidence that they can adequately complete the project.

(D) The community has no strong competing priority.

(E) The local government is supportive of the effort and understands the urgency.

(F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.

(G) Some effort and attention have already been given to local assessment of the problem.

(H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project. The capacity and skills to complete the project include the following:

(A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.

(B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.

(C) The community has equipment that will be needed to complete the project.

(D) The community has letters stating support from local businesses in form of donation of supplies or manpower.

(E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.

(F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The information provided to the TCDP to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(f) Selection procedures.

(1) During each of the two application rounds, the Office staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Office staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Office staff determines that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Office will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking.

(4) Following a final technical review, the Office staff makes funding recommendations to the executive director of the Office.

(5) The executive director of the Office reviews the final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(6) Upon announcement of contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring applications under the STEP fund. One hundred twenty (120) points are available.

(1) Project impact (total--60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TCDP funds requested minus the TCDP funds requested for engineering and administration, a percentage of the total TCDP construction dollars for each activity will be calculated. The percentage of the total TCDP construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TCDP staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

(A) first time water and/or sewer service--50

(B) water activities addressing drought conditions--50

(C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--50

(D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Department of State Health Services--50

(E) activities addressing documented severe water pressure problems--40

(F) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) - (E) of this paragraph--30

(G) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) - (F) of this paragraph--20

(2) STEP Characteristics, Merits of the Project, and Local Effort (total--30 points). The TCDP staff will assess the proposal for the following STEP characteristics not scored in other factors:

(A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;

(B) Local leaders (sparkplugs) willing to both lead and sustain the effort;

(C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it;

(D) Capacity--the manpower required for the proposal including skills required to solve the problem;

(E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TCDP dollars requested per beneficiary, etc.; and

(F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--15 points). An applicant receives up to 15 points on the following two factors.

(A) Ten of the 15 points available are awarded to applicants that do not have a current TCDP STEP grant.

(B) An applicant can receive from zero to five (5) points based on the applicant's past performance on previously awarded TCDP contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TCDP contracts that have reached the end of the original contract period stipulated in the contract. The TCDP may also assess the applicant's performance on existing TCDP

contracts that have not reached the end of the original contract period. Applicants that have never received a TCDP grant award will automatically receive these points. The TCDP will assess the applicant's performance on TCDP contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (total--2 points).

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports (total--1 point).

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission (total--1 point).

(iv) The applicant's timely response to monitoring findings on previous TCDP contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous TCDP contracts (total--1 point).

(4) Percentage of savings off the retail price (total--10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--9

(iii) 45% - 49.99% savings--7

(iv) 41% - 44.99% Savings--5

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--8

(iii) 45% - 49.99% savings--6

(iv) 41% - 44.99% Savings--3

(C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--7

(iii) 45% - 49.99% savings--5

(iv) 41% - 44.99% Savings--2

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--6

(iii) 45% - 49.99% savings--3

(iv) 41% - 44.99% Savings--1

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--5

(iii) 45% - 49.99% savings--2

(iv) 41% - 44.99% Savings--0

(5) Benefit to low/moderate income persons (total--5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TCDP funds benefit low/moderate-income persons will receive 5 points.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603181
Mark Wyatt
Manager, Program Development
Office of Rural Community Affairs
Effective date: July 2, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 936-6701

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

13 TAC §12.5

The Texas Historical Commission adopts amendments to §12.5, relating to important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds. The amended section is adopted without changes to the text of the proposed rule as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1845).

The Texas Historical Commission received no public comments regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §442.005(q) which authorizes the Texas Historical Com-

mission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code, §442.0081 is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603160
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: July 2, 2006
Proposal publication date: March 17, 2006
For further information, please call: (512) 463-8817

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13 TAC §12.7

The Texas Historical Commission adopts amendments to §12.7, relating to important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds. The amended section is adopted without changes to the text of the proposed rule as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1845).

The Texas Historical Commission received no public comments regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.0081 is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

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F. Lawerence Oaks
Executive Director
Texas Historical Commission
Effective date: July 2, 2006
Proposal publication date: March 17, 2006
For further information, please call: (512) 463-8817

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13 TAC §12.9

The Texas Historical Commission adopts amendments to §12.9, relating to important issues on the courthouse program administration for the coming biennium. This change will streamline and provide the broadest flexibility of allocating grant funds. The amended section is adopted without changes to the text of the proposed rule as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1847).

The Texas Historical Commission received no public comments regarding the proposed amendments.

These amendments are adopted under Texas Government Code, §442.005(q) which authorizes the Texas Historical Commission to promulgate rules to carry out the intent of this chapter and associated legislative mandates.

Texas Government Code §442.0081 is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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F. Lawerence Oaks
Executive Director
Texas Historical Commission
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For further information, please call: (512) 463-8817

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.102

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.102 relating to Bingo Advisory Committee without changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3152).

The amendments extend the duration of the existence of the Bingo Advisory Committee through August 31, 2007.

The Commission received no comments during the comment period, either in writing or in person at the public hearing held on April 24, 2006, at the Commission Headquarters located at 611 E. 6th Street, Austin, Texas.

The amendments are adopted under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603092

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: June 27, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

The Texas Medical Board (Board) adopts the amendments to §§163.1, 163.2, 163.4, and 163.6, and the repeal of §163.12, relating to licensure, without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3466) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, organized in 2005. The Licensure Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received no comments on the proposed amendments to §§163.1, 163.4, and 163.6, and the amendments are adopted as published, without changes. The Board received no comments on the proposed repeal of §163.12, and the repeal is adopted.

The Board received comments regarding proposed amendments to §163.2 from the following: the Texas Department of State Health Services, the Texas Medical Association and several individuals.

Comment 1. The Texas Department of State Health Services commented that the Board should allow licensure of state and local public health officials who do not meet the "active practice/full-time" requirement of current board rules. The Board has responded to this comment by authorizing the publication of a proposed new §162.14, Limited License for Practice of Administrative Medicine. The Board believes that a new type of license, specifically addressed to the non-clinical practice of medicine, will meet the concerns expressed by this comment.

Comment 2. Three commenters raised concerns about proposed changes to §163.2(b)(4)(B)(i), which would require an applicant to have passed the basic sciences portion of an acceptable licensure examination within two attempts. The commenters believe that the same attempt limit be applied to graduates of foreign medical schools as to U.S. and Canadian graduates. One of these commenters raised a question regarding the statutory authority to increase the attempt limit from three to two.

Response to Comment 2. The Board disagrees with these comments. First, it should be noted that foreign graduates of acceptable unapproved medical schools, as defined in §163.1(2) of the Rules, have the same three-attempt limit as graduates of approved U.S. and Canadian medical schools. The changes proposed create an alternative path to licensure for graduates of medical schools outside of the U.S. and Canada that are not approved and cannot be shown to be substantially equivalent or that have been disapproved by another state licensing agency. This alternative for licensure sets several requirements that are different from requirements for graduates of approved or acceptable medical schools. For graduates who cannot meet those standards, the proposed changes to the rule would provide different, alternative requirements. These alternative requirements would substitute for the requirement that the applicant have graduated from an approved medical school or a medical school that has been shown to be substantially equivalent to a Texas medical school and that has not been disapproved by another state. No one objected to any alternative requirement other than the two attempt limit for the basic sciences portion of the examination.

Each of the alternative requirements are designed to compensate for a medical school that is not approved or shown to be acceptable.

1. The requirement for an approved medical school is the only requirement to assure that an applicant is proficient in basic sciences. If an applicant has not graduated from an approved or otherwise acceptable medical school, the Board believes that some requirement substitute to try to assure that the applicant is proficient in basic sciences. The Board has reviewed a paper made available by the National Medical Examiners Board that shows that additional exam attempts create a higher probability of "false positives." False positives occur when an applicant is able to pass an examination without adequate proficiency in the subject matter. This might result from luck in answering multiple choice questions or from the fact that the sample of exam questions serendipitously corresponds to the applicant's less-than-adequate proficiency. To decrease the possibility of false positives for applicants who have attended medical schools that are neither approved or shown to be acceptable, the Board believes that this higher standard should be required.

2. Another requirement that exceeds requirements for graduates of approved or acceptable medical schools is the requirement to have never been disciplined by another state or a peer review committee. A medical school should monitor the character and fitness of its students and a record of that should be available for the Board to review. There is no assurance that an unapproved medical school has procedures in place to monitor character and fitness. Therefore, this additional requirement is justified.

3. Normally, applicants must only show that they have been in active, full-time practice for one of the last two years. This requirement may be met by being in a postgraduate training program. To assure that an applicant has been monitored, either by a training program or by hospitals or other state licensing agency for enough time to demonstrate character and fitness, the Board believes that this requirement should be increased to three of the last four years for graduates of medical schools that are not approved or shown to be acceptable.

4. An applicant can be shown to be clinically proficient in a specialty by attaining board certification. Therefore, this additional requirement for a graduate of a medical school that is not approved and has not been shown to be acceptable is justified.

Comment 3. One commenter urged that, instead of an increased examination attempt limit, the Board allow graduates of approved Texas residency programs to continue under standard guidelines, perhaps adding a trial period to review an individual's performance. The Board disagrees with this comment. The purpose of the increased examination attempt limit for basic sciences is to decrease the risk of false positives on that part of the examination and to try to assure that the applicant has adequate

proficiency in basic sciences. Eliminating that requirement in favor of a trial period for those who participate in approved Texas residency programs would limits the benefits of this alternative licensure path to Texas postgraduates. Moreover, it would not address basic sciences. The practice of medicine requires a firm foundation in basic sciences, and therefore, the Board believes that a requirement for the alternative licensure of a graduate of an unapproved medical school should attempt to assure proficiency in basic sciences.

For the reasons stated, the Board does not believe that comments to the rules as published should be adopted. The Board has adopted amendments to §163.2, as published, without changes.

22 TAC §§163.1, 163.2, 163.4, 163.6

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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22 TAC §163.12

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1, 166.2, 166.6

The Texas Medical Board (Board) adopts the amendments to §§166.1, 166.2, and 166.6, relating to Physician Registration. Sections 166.1 and 166.2 are adopted without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3469) and will not be republished. Section 166.6 is adopted with minor changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3469). The text of the rule will be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, organized in 2005. The Licensure Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received no comments on the proposed amendments to §166.1 or §166.2, and the amendments are adopted without changes.

The Board received one comment from the Texas Medical Association regarding the proposed amendment to §166.6. The Association understood "voluntary charity care" to be limited to "indigent populations in medically underserved areas." As expressed by the comma following "indigent populations" in the proposed rule as published, the Board intended that "voluntary charity care" include three categories of medical care provided for no compensation: (A) to indigent populations; (B) in medically underserved areas; or (C) for a disaster relief organization. Therefore, the Board has adopted the rule with these grammatical changes to clarify the intended meaning of the rule.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§166.6. Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care.

(a) A retired physician licensed by the board whose only practice is the provision of voluntary charity care shall be exempt from the registration fee.

(b) As used in this section:

(1) "voluntary charity care" means medical care provided for no compensation to:

(A) indigent populations;

(B) in medically underserved areas; or

(C) for a disaster relief organization.

(2) "compensation" means direct or indirect payment of anything of monetary value, except payment or reimbursement of reasonable, necessary, and actual travel and related expenses.

(c) To qualify for and obtain such an exemption, a physician must truthfully certify under oath, on a form approved by the board, and received by the board at least 30 days prior to the expiration date of the permit, that the following information is correct:

(1) the physician's practice of medicine does not include the provision of medical services for either direct or indirect compensation which has monetary value of any kind;

(2) the physician's practice of medicine is limited to voluntary charity care for which the physician receives no direct or indirect compensation of any kind for medical services rendered;

(3) the physician's practice of medicine does not include the provision of medical services to members of the physician's family; and

(4) the physician's practice of medicine does not include the self-prescribing of controlled substances or dangerous drugs.

(d) A physician who qualifies for and obtains an exemption from the registration fee authorized under this section shall obtain and report continuing medical education as required under the Act, §§156.051-.055 and §166.2 of this title (relating to Continuing Medical Education), except that the number of hours of informal CME, as required by §166.2(a)(3) shall be reduced from 12 hours to 10 hours.

(e) A retired physician who has obtained an exemption from the registration fee as provided for under this section, may be subject to disciplinary action under the Act, §§164.051-.053, based on unprofessional or dishonorable conduct likely to deceive, defraud, or injure the public if the physician engages in the compensated practice of medicine, the provision of medical services to members of the physician's family, or the self-prescribing of controlled substances or dangerous drugs.

(f) A physician who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §164.052(a)(1), in addition to any civil or criminal actions provided for by state or federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §§171.2 - 171.4, 171.6, 171.7

The Texas Medical Board (Board) adopts amendments to §§171.2 - 171.4, 171.6, and 171.7, relating to Postgraduate Training Permits. Sections 171.2, 171.6 and 171.7 are adopted without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3473) and will not be republished. Sections 171.3 and 171.4 are adopted with changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3473). The text of the rules will be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, organized in 2005. The Licensure Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received comments from the Texas Graduate Medical Education Council and no others.

Comment 1. The commenter requested that the definition of "Fellowship," in §171.3(a)(4) apply to an "Approved Fellowship" to differentiate between the approved fellowships and the board-approved fellowship. After reviewing the language of the definition, the Board determined that the words: "or fellowship approved by the Texas Medical Board" be added to the end of the sentence, so that the defined word "fellowship" can be used in the definition of "Approved Board Fellowship." Whenever in these rules the word "fellowship" appears, the intent is to refer to any approved fellowship, whether approved by the Board or any of the other listed entities. The Board agreed and the rule has been amended.

Comment 2. The commenter suggested a change to §171.3(a)(6)(A), to specifically reference any "fellowship," as defined by the rule. The Board agreed and the rule has been amended.

Comment 3. The commenter suggested a change to §171.3(b)(1)(D) to specifically reference a "fellowship," as defined by the rule. The Board agreed and the rule has been amended.

Comment 4. The commenter suggested a change to §171.3(c)(2)(B)(i)(I) to correct the reference to sections defining an approved postgraduate training program. The Board agreed and the rule has been amended.

Comment 5. The commenter suggested a change to §171.3(c)(2)(B)(ii)(I)(-a-) to correct the reference to sections defining an approved postgraduate training program. The Board agreed and the rule has been amended.

Comment 6. The commenter suggested a change to §171.3(c)(2)(B)(ii)(II)(-c-) to identify a "mentoring physician," rather that a "postgraduate training program," stating that the visiting training does not enter a program at the hosting institution on these electives. The Board agrees with the comment, but believes that "on-site preceptor physician" is a more descriptive phrase than "mentoring physician". The Board agreed and the rule has been amended.

Comment 7. The commenter suggested a grammatical change to §171.4(h) for clarity. The Board agreed and the rule has been amended.

No comments were received regarding §§171.2, 171.6, and 171.7 and the Board adopted those proposed rules as published.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§171.3. Physician-in-Training Permits.

(a) Definitions.

(1) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education (ACGME),

the American Osteopathic Association (AOA), the Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior to 1994), the Royal College of Physicians and Surgeons of Canada, or the College of Family Physicians of Canada.

(2) Board-approved Fellowship: a clearly defined and delineated postgraduate subspecialty-training program approved by the Texas State Board of Medical Board under §171.4 of this title.

(3) Designated Institutional Official (DIO): The individual in a sponsoring graduate medical education institution who has the authority and responsibility for the graduate medical education programs.

(4) Fellowship: A subspecialty training program of graduate medical education for postgraduate residents who have completed the requirements for eligibility for first board certification in the specialty and that is approved by the Accreditation Council for Graduate Medical Education (ACGME), the American Osteopathic Association (AOA), a member board of the American Board of Medical Specialties (ABMS), or a member board of the Bureau of Osteopathic Specialists (BOS) or a fellowship approved by the Texas Medical Board.

(5) Postgraduate Resident: a physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program or a board-approved fellowship.

(6) Physician-in-Training Permit:

(A) A physician-in-training permit is a permit issued by the board in its discretion to a physician who does not hold a license to practice medicine in Texas and is enrolled in a training program as defined in paragraphs (1), (2), and (4) of this subsection in Texas, regardless of his/her postgraduate year (PGY) status within the program.

(B) The permit shall be effective for the length of the postgraduate training program as reported by the training program.

(C) A physician-in-training permit is valid only for the practice of medicine within the training program for which it was approved. If a permit holder enters into a new program that is not covered by the issued permit, the permit shall be terminated and the permit holder must apply for a new permit for the new program.

(D) A physician-in-training permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine that is outside of the approved program.

(b) Qualifications of Physician-in-Training Permit Holders.

(1) To be eligible for a physician-in-training permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character and has not violated §§164.051 - 164.053 of the Medical Practice Act;

(C) is a graduate of a medical school or has completed a Fifth Pathway Program;

(D) has been accepted into an approved postgraduate training program, a board-approved postgraduate fellowship training program, or a fellowship meeting the criteria set forth in subsection (a)(4) of this section; and

(E) has been credentialed by the postgraduate training program to include verification by the program of:

(i) the applicant's identity; and

(ii) the applicant's character and academic qualifications including verification of medical school graduation.

(2) To be eligible for a physician-in-training permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude.

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the ninetieth (90th) day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) The board may, in unusual circumstances, allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) For each document presented to the board, which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for training permit and shall approve the issuance of physician-in-training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or panel of the board for review of the application for a determination of eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee or panel finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's or panel's determination. The hearing shall be before an administrative law judge of the State Office of Adminis-

trative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Gov't Code Chapter 552 and the Medical Practice Act, Tex. Occ. Code §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules;

(B) certification by the postgraduate training program:

(i) for a Texas postgraduate training program, a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a Texas licensed physician, the Texas Licensed physician supervising physician of the postgraduate training program on a form provided by the board that certifies that:

(I) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(II) the applicant has met all educational and character requirements established by the program and has been accepted into the program; and

(III) the program has received a letter from the dean of the applicant's medical school that states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school.

(ii) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program or with the military:

(I) a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a physician licensed in any state, the supervising physician, licensed in any state, of the postgraduate training program on a form provided by the board that certifies that:

(-a-) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(-b-) the applicant has met all educational and character requirements established by the program and has been accepted into the program;

(-c-) the program has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school; and

(II) a certification by the Texas Licensed physician supervising the Texas rotations of the postgraduate training program on a form provided by the board that certifies:

(-a-) the facility at which the rotations are being completed,

(-b-) the dates the rotations will be completed in Texas, and

(-c-) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotation in Texas;

(C) arrest records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority by the applicant and said authority must submit copies directly to the board;

(D) medical records for inpatient treatment for alcohol/substance abuse, mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) all records, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(E) medical records for outpatient treatment for alcohol/substance abuse, mental illness, or physical illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(F) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant;

(G) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(d) Expiration of Physician-in-Training Permit.

(1) Physician-in-Training permits shall be issued with effective dates corresponding with the beginning and ending dates of the postgraduate resident's training program as reported to the board by the program director.

(2) Physician-in-training permits shall expire on any of the following, whichever occurs first:

(A) on the reported ending date of the postgraduate training program;

(B) on the date a postgraduate training program terminates or otherwise releases a permit holder from its training program; or

(C) on the date the permit holder obtains full licensure or temporary licensure pending full licensure pursuant to §155.002 of the Act.

(3) Physician-in-training permit holders who are issued permits on or after April 1, 2005, and who require extensions to remain in a training program after a program's reported ending date must submit a written request to the board and fee, if required, along with a statement by the program director authorizing the request for the extension. Such extensions shall be granted at the discretion of the board's executive director and may not be for longer than 90 days unless good cause is shown.

(e) The executive director of the board may, in his/her discretion, issue a temporary physician-in-in-training permit to an applicant if the applicant and the postgraduate training program have submitted written requests. The executive director, in his/her discretion, will determine the length of the permit and may issue additional temporary physician-in-training permits to an applicant.

§171.4. Board-Approved Fellowships.

(a) The executive director may in his/her discretion, upon written request, approve fellowships as referenced in §171.3(a)(2) of this chapter. Fellowships meeting the criteria set forth in §171.3(a)(4) of this chapter do not require board approval for physician-in-training permits to be issued to subspecialty postgraduate residents in the fellowship. If the executive director does not recommend approval, the institution's designated institutional official (DIO) and chair of the Graduate Medical Education Committee (GMEC) may appeal to the board for its discretionary consideration of the request.

(b) The initial request for approval should be submitted to the executive director, on a form prescribed by the board, 90 days prior to the beginning date of the program to assist in the expedited processing of an application. The request must include the length of the fellowship; the length of time for which the institution is requesting approval of the fellowship itself, not to exceed five years; and other information as required by the board.

(c) Approval of fellowships requires certification by the DIO and the chair of the GMEC of the institution in which the fellowship will be conducted that the fellowship program has been evaluated and approved by the institution's graduate medical education committee. The evaluation shall include but not be limited to satisfactory demonstration to the committee of the fellowship's:

(1) goals and objectives; documented curriculum; and, qualifications of the program director and program faculty, including, but not limited to, certification by the appropriate specialty board and/or appropriate educational qualifications;

(2) process by which subspecialty postgraduate residents are selected;

(3) prerequisite requirements of the postgraduate residents, including whether prior residency training in a related specialty is required;

(4) delineated duties and responsibilities required of subspecialty postgraduate residents in the program;

(5) number of subspecialty postgraduate residents to be enrolled each year;

(6) scholarly activity to be required of subspecialty postgraduate residents;

(7) type of supervision to be provided for subspecialty postgraduate residents;

(8) requirements for the program director or supervising physician to hold a Texas license or faculty temporary license issued by the board;

(9) methods for evaluation of subspecialty postgraduate residents by the program; and

(10) progressive nature, including, but not limited to, the progressively greater responsibility of the subspecialty postgraduate residents throughout the course of the fellowship if the fellowship is over one year in length.

(d) Institutions with board-approved fellowships must determine whether to conduct internal reviews of the program at the midpoint of the program's most recent approval period.

(e) Institutions with board-approved fellowships that are eligible for accreditation as described in §171.3(a)(4) of this chapter must determine whether the fellowship should seek such accreditation rather than board approval of the fellowship.

(f) The DIO and the chair of the GMEC of the institution for which a fellowship program has been previously approved by the board must apply to have the program approved again, if the program is to continue after the expiration date. Applications for subsequent approval must comply with all requirements in this section for initial approval and must be submitted at least three months prior to the expiration of the approved program in order to prevent a lapse in time of the fellowship. Permit holders shall be allowed to complete their fellowship regardless of continuing program approval.

(g) All board-approved fellowships that subsequently become approved by the ACGME, AOA, a member board of the ABMS, or a member board of the BOS, must notify the board within 30 days of their approval. Fellowships may not be dually approved by the board and ACGME, AOA, a member board of the ABMS, or a member board of the BOS. A board-approved fellowship that becomes approved by the ACGME, AOA, a member board of the ABMS, or a member board of the BOS immediately loses its board-approved status when its new approval becomes effective through the ACGME , AOA, a member board of the ABMS, or a member board of the BOS.

(h) All fellowships that have been approved before September 1, 2006 shall expire on the date provided in the original approval, but no later than August 31, 2007. A new application for approval must be submitted at least three months prior to the expiration date or on June 1, 2007, whichever date is earlier. All requests for board approval of fellowships submitted on or after September 1, 2006 must comply with the requirements of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.13

The Texas Medical Board (Board) adopts the new §172.13, relating to a limited license for Conceded Eminence, without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3478) and will not be republished.

Prior to publishing the proposed new rule, the Board sought stakeholder input through a Licensure Stakeholder Group, organized in 2005. The Licensure Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received one comment from the Texas Medical Association in support of this rule, as published.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 174. TELEMEDICINE

22 TAC §174.2, §174.6

The Texas Medical Board (Board) adopts the amendments to §174.2 (Definitions) and new §174.6 (standards for delegation to and supervision of telepresenters), relating to Telemedicine. The amendments and the new rule are adopted without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3479) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through an Enforcement Stakeholder Group, organized in 2005. The Enforcement Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received one comment from the Texas Medical Association regarding the proposed new §174.6. The Association suggested that §174.6(c) be expanded to provide a definition of "adequate supervision." The Board will seek comments from the Enforcement Stakeholder Group regarding a definition of "adequate supervision," which may be considered by the Board in future rulemaking actions.

The amendment and new section are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 178. COMPLAINTS

22 TAC §178.8

The Texas Medical Board (Board) adopts amendments to §178.8, relating to the deletion of the deadline for filing an appeal to the dismissal of a complaint, without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3480) and will not be republished.

Prior to publishing the adopted new rule, the Board sought stakeholder input through an Enforcement Stakeholder Group, organized in 2005. The Enforcement Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The only comment received regarding this proposed rule was from the Texas Medical Association in support of this rule, as published.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §§185.1 - 185.4, 185.6 - 185.8, 185.13, 185.15 - 185.19, 185.22, 185.23, 185.26

The Texas Medical Board (Board) adopts amendments to §§185.1 - 185.4, 185.6 - 185.8, 185.13, 185.15 - 185.19, 185.22, 185.23, and new §185.26, relating to physician assistants. Sections 185.1 - 185.3, 185.6 - 185.8, 185.13, 185.15 - 185.19, 185.22, 185.23, and 185.26 are adopted without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3481) and will not be republished. Section 185.4 is adopted with changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3481). The text of the rule will be republished.

The adopted rules were proposed by the Texas Physician Assistant Board and approved by the Texas Medical Board.

Prior to publishing the proposed new rule, the Board sought stakeholder input through an Enforcement Stakeholder Group, organized in 2005. The comments of the Enforcement Stakeholder Group on the suggested changes to the rules were incorporated into the published proposed rules.

There were no comments received regarding §§185.1 - 185.3, 185.6 - 185.8, 185.13, 185.15 - 185.19, 185.22, and 185.23 and new §185.26.

There was only one comment regarding §185.4, that being from an individual, a member of the Texas Physician Assistant Board. The individual pointed out that the proposed rule as published contained a mistake in §185.4(a)(10), which stated that "applicants who apply for a license on or after January 1, 2007, passes the national licensing examination required for NCCPA certification within no more that three attempts." This should have been "six attempts," in accordance with the action of the Texas Physician Assistant Board and the Medical Board and was a typographical error. The Board has corrected this error and the rule will be adopted with the change.

The amendments and new section are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§185.4. Procedural Rules for Licensure Applicants.

(a) Except as otherwise provided in this section, an individual shall be licensed by the board before the individual may function as a physician assistant. A license shall be granted to an applicant who:

(1) submits an application on forms approved by the board;

(2) pays the appropriate application fee as prescribed by the board;

(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Accreditation Review Commission for the Education of Physician Assistants (ARC-PA), or by that committee's predecessor or successor entities, and holds a valid and current certificate issued by the National Commission on Certification of Physician Assistants ("NCCPA");

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;

(5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the board takes that fact into consideration in determining whether to issue the license;

(6) is of good moral character;

(7) is of good professional character as defined under §185.1(7) of this title.

(8) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications;

(9) meets any other requirement established by rules adopted by the board; and

(10) for applicants who apply for a license on or after January 1, 2007, passes the national licensing examination required for NCCPA certification within no more than six attempts.

(11) for applicants who apply for a license on or after September 1, 2007, passes a jurisprudence examination ("JP exam"), which shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) Applicants must pass the JP exam with a score of 75 or better within three attempts.

(C) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(D) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(E) An applicant who is unable to pass the JP exam within three attempts must appear before a committee of the board to address the applicant's inability to pass the examination and to re-evaluate the applicant's eligibility for licensure. It is at the discretion of the committee to allow an applicant additional attempts to take the JP exam.

(b) The following documentation shall be submitted as a part of the licensure process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) Certification. Each applicant for licensure must submit:

(A) a letter of verification of current NCCPA certification sent directly from NCCPA, and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the board.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Verification from other states. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the physician assistant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, canceled, suspended, or revoked. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(5) State License Registration. Each applicant, if licensed, registered, or certified in another state as a physician assistant, must submit a copy of the license registration certificate to the board. The license, registration, or certificate number and the date of expiration must be visible on the copy.

(6) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition needs to be requested from the arresting authority and that authority must submit copies directly to the board.

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure must be submitted.

(c) The executive director shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by a committee of the board within 20 days of receipt of such notice, and the executive director may refer any application to said committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons therefor, shall be submitted to the board unless the applicant requests a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The committee may refer any application for determination of eligibility to the full board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A physician assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(d) All physician assistant applicants shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced as a physician assistant, has been a student at an acceptable approved physician assistant program, or has been on the active teaching faculty of an acceptable approved physician assistant program, within either of the last two years preceding receipt of an application for licensure. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year. Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions as set forth in paragraphs (1)-(4) of this subsection:

(1) completion of specified continuing medical education hours approved for Category 1 credits by a CME sponsor approved by the American Academy of Physician Assistants;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a physician assistant;

(3) remedial education; and

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a physician assistant.

(e) Applicants for licensure:

(1) whose application for licensure which has been filed with the board office and which is in excess of one year old from the date of receipt, shall be considered inactive. Any fee previously submitted with the application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application of licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License

prior to being considered by the board for licensure, as required by §185.7 of this title (relating to Temporary License);

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §§192.1 - 192.5

The Texas Medical Board (Board) adopts amendments to §§192.1 - 192.5, relating to Office-Based Anesthesia Services. Sections 192.1, 192.4, and 192.5 are adopted without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3487) and will not be republished. Sections 192.2 and 192.3 are adopted with changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3487). The text of the rules will be republished.

Prior to publishing the adopted amendments, the proposed rules were the subject of a resource group of physicians with experience in anesthesia. The Board further sought stakeholder input through a Licensure Stakeholder Group, organized in 2005. The Licensure Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received comments regarding the proposed amendments from the Board of Nurse Examiners for the State of Texas and the Texas Association of Nurse Anesthetists.

Comment 1. The Board of Nurse Examiners commented that there had not been cooperation between the Texas Medical Board and the Board of Nurse Examiners regarding the proposed changes to Chapter 192 and the current rule should not be deleted or rewritten unless there is cooperation between the boards. As discussed below, the Texas Medical Board has considered and agreed with the comments of the Board of Nurse Examiners, demonstrating its cooperation with the Board of Nurse Examiners. As shown in the response to Comments 2 and 3, the Board has adopted amendments to the rules, as requested by the commenters, and adopted the amended rules, as shown below.

Comment 2. Both commenters contended that §192.2(k) attempted to expand the requirement for current competency in advanced cardiac life support to include certified registered nurse anesthetists and that the Board is without authority to regulate the practice of a nurse anesthetist. Further investigation has shown that the Board of Nurse Examiners already requires that certified registered nurse anesthetists be certified in advanced cardiac live support. The Board agrees that the proposed rule could be interpreted as an attempt to regulate nurse anesthetists and that the Board does not have statutory authority to do so.

A Board member noted that §192.2(c)(4) should be titled "Level IV services" and this non-substantive change has been made.

Comment 3. Both commenters contended that proposed §192.3(a) is in conflict with Texas Occupations Code, §157.058(a) and §157.060. The Board does not necessarily agree that there would be any conflict. The proposed rule simply stated that this rule should not be construed to affect any professional or legal responsibility for delegation to a non-physician, including a certified registered nurse anesthetist. If there is no professional or legal responsibility, as the commenters contend, then this rule would not be construed as an attempt to create any responsibility. If there is professional or legal responsibility, then the adopted rule would not be construed to increase or decrease that responsibility. However, in cooperation with the Board of Nurse Examiners, the Board has amended the proposed rule and adopted the amended rule as shown below. It is the intent of the Board, however, to affect no change in any legal or professional responsibility by the adoption of this rule.

No comments were received regarding §§192.1, 192.4, or 192.5.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§192.2. Provision of Anesthesia Services in Outpatient Settings.

(a) The purpose of these rules is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(b) The rules promulgated under this title do not apply to physicians who practice in the following settings listed in paragraphs (1)-(8) of this subsection:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) any setting physically located outside the State of Texas;

(3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;

(4) a licensed ambulatory surgical center;

(5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. (479-1 or as listed under a successor federal statute or regulation;

(6) a facility maintained or operated by a state or governmental entity;

(7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and

(8) an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services that are administered within two hours before an out patient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved BCLS; and

(B) the following age-appropriate equipment must be present:

(i) bag mask valve;

(ii) oxygen;

(iii) AED or other defibrillator; and

(iv) pre-measured doses of epinephrine, atropine, adreno-corticoids, and antihistamines.

(2) Level II services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved ACLS or PALS, as appropriate;

(i) another person must be currently certified at least in AHA approved BCLS; and

(ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:

(i) bag mask valve and appropriate airway maintenance devices;

(ii) oxygen;

(iii) AED or other defibrillator;

(iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;

(v) IV equipment;

(vi) pulse oximeter; and

(vii) EKG Monitor.

(3) Level III services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved ACLS or PALS, as appropriate;

(i) another person must be currently certified at least in AHA approved BCLS;

(ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and

(B) the same equipment required for Level II;

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for which anesthesia services are provided in outpatient settings at Level IV shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following listed in paragraphs (1)-(8) of this subsection:

(A) Basic Standards for Preanesthesia Care;

(B) Standards for Basic Anesthetic Monitoring;

(C) Standards for Postanesthesia Care;

(D) Position on Monitored Anesthesia Care;

(E) The ASA Physical Status Classification System;

(F) Guidelines for Nonoperating Room Anesthetizing Locations;

(G) Guidelines for Ambulatory Anesthesia and Surgery; and

(H) Guidelines for Office-Based Anesthesia.

(d) A physician delegating the provision of anesthesia or anesthesia-related services to a certified registered nurse anesthetist shall be in compliance with ASA standards and guidelines when the certified registered nurse anesthetist provides a service specified in the ASA standards and guidelines to be provided by an anesthesiologist.

(e) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during perianesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(f) The anesthesiologist or physician providing anesthesia or anesthesia-related services in an outpatient setting shall perform a preanesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per current ASA standards. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may perform those services within the scope of practice of the CRNA. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be ob-

tained per indications and assessment findings. Pre-anesthetic diagnostic testing and specialist consultation should be obtained as indicated by the pre-anesthetic evaluation by the anesthesiologist or suggested by the nurse anesthetist's pre-anesthetic assessment as reviewed by the surgeon. If responsibility for a patient's care is to be shared with other physicians or non-physician anesthesia providers, this arrangement should be explained to the patient.

(g) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum monitoring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current ASA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current ASA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored. There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. A two-way communication source not dependent on electrical current shall be available. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(h) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for seven years or for a period of time as determined by the board.

(i) Each location must have emergency supplies immediately available. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for seven years or for a period of time as determined by the board.

(j) The operating surgeon shall verify that the appropriate policies or procedures are in place. Policies, procedure, or protocols shall be evaluated and reviewed at least annually. Agreements with local emergency medical service (EMS) shall be in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agreements shall be evaluated and re-signed at least annually. Policies, procedure, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to the following listed in paragraphs (1)-(2) of this subsection:

(1) Management of outpatient anesthesia. At a minimum, these must address:

(A) patient selection criteria;

(B) patients/providers with latex allergy;

(C) pediatric drug dosage calculations, where applicable;

(D) ACLS (advanced cardiac life support) or PALS (pediatric advanced life support) algorithms;

(E) infection control;

(F) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(G) discharge criteria.

(2) Management of emergencies. At a minimum, these must include, but not be limited to:

(A) cardiopulmonary emergencies;

(B) fire;

(C) bomb threat;

(D) chemical spill; and

(E) natural disasters.

(k) Physicians, and anesthesiologists shall maintain current competency in ACLS, PALS, or a course approved by the board. In all settings under these rules, at a minimum, at least two persons, including the surgeon or anesthesiologist, shall maintain current competency in basic life support.

(l) Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under these rules resulted in an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours, or a patient's death intraoperatively or within the immediate postoperative period. Immediate postoperative period is defined as 72 hours.

§192.3. Compliance with Office-Based Anesthesia Rules.

(a) A physician who provides anesthesia services or performs a procedure for which anesthesia services are provided in an outpatient setting shall comply with the rules adopted under this title.

(b) The board may require a physician to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the physician's provision of anesthesia services in an outpatient setting in accordance with the Medical Practice Act, Title

3 Subtitle C §§162.101-.107 of the Texas Occupations Code, or rules of the board.

(c) Any physician who violates these rules shall be subject to disciplinary action and/or termination of the registration issued by the board as authorized by the Medical Practice Act or rules of the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 199. PUBLIC INFORMATION

22 TAC §199.5

The Texas Medical Board (Board) adopts new §199.5 (Notice of Ownership Interest in a Niche Hospital), relating to Public Information, without changes to the proposed text as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3491) and will not be republished.

Prior to publishing the proposed amendments, the Board collaborated with the Texas Department of Health Services in the design of the proposed form for notice to be sent to that agency. Furthermore, the Board sought stakeholder input through an Enforcement Stakeholder Group, organized in 2005. The Enforcement Stakeholder Group made comments on the suggested changes to the rules at a meeting held on March 21, 2006, which comments were incorporated into the published proposed rules.

The Board received no comments regarding the proposed new rule.

The new section is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, concerning Internship Training Schedule, with a minor change to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2981). The text of the rule will be republished.

Paragraph (12) is amended because it is not the board's position to limit proprietorship. Paragraph (14) is amended because the rule was in conflict with other statutes. Paragraph (17)(A) is amended for general grammatical clean-up.

Paragraph (17)(A) is adopted with a minor change. The comma (,) after the word, "class" has been deleted.

One individual commented on §391.3(14). The individual felt sponsors needed to stay current by attending continuing education and that could influence the interns they were sponsoring. The board heard the written comment and voted to adopt the amendments as written to §391.3(14).

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

§391.3. Internship Training Schedule.
The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) History and development of polygraph--four hours.

(2) Legal and ethical aspects of polygraph.

(A) Texas Polygraph Examiners Act--10 hours.

(B) Statements and reports, civil rights, examiner and professional ethics--10 hours.

(3) Physiology--24 hours.

(A) Nervous system, autonomic nervous system.

(i) Sympathetic system.

(ii) Parasympathetic system.

(B) Circulatory system and the heart.

(C) Respiratory system.

(D) Effects of drugs, alcohol, and illness.

(4) Psychology--24 hours.

(A) General.

(B) Abnormal.

(C) As applied to polygraph.

(5) Interrogation and interviews--100 hours.

(A) Receiving case briefing.

(B) Pre-test interview.

(C) Post-test interview.

(6) Chart interpretation--120 hours.

(A) All types of tests and responses.

(B) Chart marking.

(C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.

(7) Question formulation and test construction--120 hours.

(A) All types of tests.

(B) All types of questions.

(C) Semantics.

(8) Instrumentation--10 hours.

(A) Construction and maintenance.

(B) Trouble shooting.

(C) Nomenclature.

(9) Summary and general review--10 hours.

(10) Supervised testing and interviewing--minimum of 30 tests.

(11) Counseling and critique as required in opinion of sponsor.

(12) A list of approved polygraph schools shall be maintained at the Board office and will be made available upon request. Board approval of a polygraph school will be based on the school's training schedule. The board may recognize American Polygraph Association (A.P.A.) accredited schools.

(13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application .

(15) No licensed examiner shall have more than two (2) interns under his/her sponsorship at any one time.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the first day of class of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2006.

TRD-200603063
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: June 27, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 424-2058

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) adopts the repeal of §§801.18, 801.19, 801.144, 801.201, 801.202, 801.204, and 801.361 - 801.369; new §§801.18, 801.201, 801.202, and 801.361 - 801.364; and amendments to §§801.1, 801.2, 801.11 - 801.17, 801.41 - 801.54, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.114, 801.141 - 801.143, 801.171 - 801.174, 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.302, 801.331 - 801.332, and 801.351, concerning the licensure and regulation of marriage and family therapists. New §§801.18, 801.201, 801.202, and 801.362, and amendments to §§801.2, 801.42, 801.44, 801.45, 801.112, 801.142, 801.143, 801.174, 801.203, and 801.233 are adopted with changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8595). The repeal of §§801.18, 801.19, 801.144, 801.201, 801.202, 801.204, 801.361 - 801.369; new §§801.361, 801.363, 801.364; and amendments to §§801.1, 801.11 - 801.17, 801.41, 801.43, 801.46 - 801.54, 801.71 - 801.73, 801.91 - 801.93, 801.111, 801.113, 801.114, 801.141, 801.171 - 801.173, 801.231, 801.232, 801.234 - 801.237, 801.261 - 801.268, 801.291 - 801.302, 801.331, 801.332, and 801.351 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Chapter 801 has been reviewed in its entirety and the board has determined that the reasons for adopting the sections continue to exist because rules relating to the licensure and regulation of marriage and family therapists are needed in order to protect and promote public health, safety, and welfare. The rule review revealed that the sections require modification to update and clarify the rules.

In general, each section was reviewed and new, repealed, or amended rules are adopted in order to ensure clarity; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

Additionally, the 79th Texas Legislature, 2005, enacted House Bill 1413, which became effective September 1, 2005. The legislation was the result of the review of the board and the board's enabling statute by the Sunset Advisory Commission. The Commission recommended, and the Legislature enacted, amendments to the enabling statute (Occupations Code, Chapter 502) that are intended to strengthen the regulation of marriage and family therapists and apply Sunset across-the-board recommendations for licensing programs. This rule adoption addresses those statutory amendments.

The repeals, new sections, and amendments are the result of the comprehensive rule review undertaken by the board and the board's staff, as well as the need to implement and incorporate recent legislation.

SECTION-BY-SECTION SUMMARY

Regarding Subchapter A, amendments to §801.1 are adopted to improve draftsmanship. Amendments to §801.2 are adopted to add a new definition of "client", to revise the definition of "regionally accredited institution" to "accredited institutions", to improve accuracy and clarity, and to delete unnecessary language.

Regarding Subchapter B, amendments to §801.11 are adopted to ensure that at least one public member shall be appointed to the Ethics Committee, to ensure that the board member training program shall meet the requirements of the enabling statute, and to clarify that board members are entitled to reimbursement of travel expenses.

Amendments to §801.12 are adopted to improve draftsmanship. Amendments to §801.13 are adopted to reflect current policy and operational considerations. Amendments to §801.14 and §801.15 are adopted to improve accuracy, and revise references to the Act and department. Amendments to §801.16 are adopted to improve and clarify the board's policy regarding disability accommodations. Amendments to §801.17 are adopted to include a "renewal card".

The repeal of §801.18 is adopted as not reflecting current operational procedures.

The repeal of existing §801.19 and new §801.18 are adopted to renumber the section and to reflect the doubling of licensing fees necessitated by the move to two-year license terms. Notwithstanding other law, two-year license terms were mandated by House Bill 2292, 78th Regular Session. Fees for a two-year license are two times the amount of the fee for a one-year license. The section is also adopted to reflect the board's authority to collect fees required to fund the Office of Patient Protection and the processing costs of transactions conducted through Texas Online.

Regarding Subchapter C, amendments to §801.41 and §801.42 are adopted to improve and clarify the sections and to delete the word "rendering" and the subject concerning "scope". Amendments to §801.43 are adopted to improve draftsmanship. Amendments to §801.44 are adopted to clarify board expectations regarding information to be provided to prospective clients.

Amendments to §801.45 - 801.47 are adopted to improve draftsmanship. Amendments to §801.48 are adopted to clarify the section and incorporate the topic of the release of mental health records. Amendments to §801.49 are adopted to eliminate the unnecessary prohibition that applicants may not use board members as references. Amendments to §§801.50 - 801.54 are adopted to improve accuracy and draftsmanship and to clarify the sections.

Regarding Subchapter D, amendments to §801.71 and §801.72 are adopted to improve draftsmanship and clarify that an application must be complete within one year of the original date of filing or the application may be voided.

Amendments to §801.73 are adopted to reflect current operating procedure, to eliminate the requirement relating to an applicant's references, and to require applicants to submit proof of completion of the jurisprudence examination, which is required by recent Sunset legislation.

Regarding Subchapter E, amendments to §§801.91 - 801.93 are adopted to improve draftsmanship and accuracy of the sections.

Regarding Subchapter F, amendments to §801.111 are adopted to improve draftsmanship. Amendments to §801.112 are adopted to clarify that it is the responsibility of the applicant to have foreign coursework and degrees evaluated by a professional transcript evaluation service approved by the board. Amendments to §801.113 and §801.114 are adopted to improve draftsmanship.

Regarding Subchapter G, amendments to §801.141 are adopted to improve draftsmanship. Amendments to §801.142 are adopted to clarify that the section relates only to experience requirements for licensure and to move existing language from §801.144 into the section. Amendments to §801.143 are adopted to improve accuracy and draftsmanship and clarify the section's intent. The section is also amended to clarify that an approved supervisor must have either completed a graduate level course in supervision, a continuing education course in supervision, or be approved by the American Association of Marriage and Family Therapy to supervise interns. The repeal of §801.144 is adopted, as the language of the section is more appropriately placed into §801.142 and §801.143.

Regarding Subchapter H, amendments to §801.171 and §801.172 are adopted to improve draftsmanship. Amendments to §801.173 are adopted to clarify that the section relates to the licensure examination and to delete obsolete language. Amendments to §801.174 are adopted to clarify and establish procedures for the licensure and jurisprudence examinations.

Regarding Subchapter I, the repeal of §§801.201, 801.202 and 801.204 and new §801.201 and §801.202 are adopted in order to reorganize, rewrite, and improve the subchapter. Amendments to §801.203 are adopted to correct references.

Regarding Subchapter J, amendments to §801.231 are adopted to include late renewal and surrender of license. Amendments

to §801.232 are adopted to reflect the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003. Amendments are also adopted to update language relating to failure to pay student loans and to incorporate language relating to failure to pay an administrative penalty, as established by recent Sunset legislation. Amendments to §801.233 are adopted to eliminate language relating to fee proration as not reflecting current operating procedure. Amendments to §801.234 are adopted to reflect current operating procedure, to improve section intent, and to eliminate unnecessary language relating to license renewal when a contested case is pending. The Administrative Procedure Act governs license renewal when a contested case is pending.

Amendments to §801.235 are adopted to clarify and update the section. Amendments to §801.236 are adopted to clarify and update the section, to require that inactive status periods are two-year periods and are renewable biennially, to eliminate fee proration upon return to active status, and to eliminate unnecessary language. Amendments to §801.237 are adopted to clarify procedures relating to license surrender when a complaint is not pending and when a complaint is pending.

Regarding Subchapter K, amendments to §§801.261 - 801.264 are adopted to improve draftsmanship; to incorporate references and procedures relating to the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003; and to provide for the acceptance of one hour of ethics continuing education for completing the jurisprudence examination. Amendments to §801.265 are adopted to establish that the board may evaluate continuing education sponsors, remove sponsor approval for non-compliance, and disallow continuing education hours gained from unapproved sponsors.

Amendments to §801.266 are adopted to reference the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003 and to clarify the use of clinical supervision as continuing education hours. Amendments to §801.267 are adopted to improve accuracy concerning clock hour credits. Amendments to §801.268 are adopted to improve draftsmanship and update the section concerning continuing education.

Regarding Subchapter L, amendments to §§801.291 - 801.293 are adopted to improve draftsmanship and update the sections. Amendments to §801.294 are adopted to incorporate the board's new authority to issue a cease and desist order to an unlicensed person who is in violation of the Act or rules, and to impose an administrative penalty upon that person for violation of an order. Amendments to §§801.295 - 801.298 are adopted to improve draftsmanship; to clarify, update, and improve the sections; to update obsolete language relating to cease and desist orders; and to clarify monitoring requirements. Amendments to §801.299 are adopted to update the board's administrative penalty schedule to reflect recent Sunset legislation and to eliminate obsolete language. Amendments to §801.300 - 801.302 are adopted to improve draftsmanship and clarify that administrative penalties may be assessed in combination with or in lieu of other disciplinary action.

Regarding Subchapter M, amendments to §801.331 and §801.332 are adopted to revise and add references concerning licensing of persons with criminal backgrounds.

Regarding Subchapter N, amendments to §801.351 are adopted to change the term settlement conference to informal conference; to update the section to reflect current operating procedure; to improve accuracy; to incorporate language relating to the board's new authority to order consumer refunds as part of an informal conference agreement; and to establish new language relating to the failure to appear at an informal conference.

Regarding Subchapter O, the repeal of §§801.361 - 801.369 are adopted to reorganize and improve the subchapter and to eliminate obsolete and unnecessary provisions. New §§801.361 - 801.364 are adopted to establish updated provisions relating to formal hearings that reflect current operating procedures.

COMMENTS

There were no public comments received regarding the proposal. However, the following changes are made by the board as a result of further review of the rule proposal by the board and its staff.

Change: Regarding the definition of "regionally accredited institutions" in §801.2(24), the term was changed to "accredited institutions". The section was renumbered in order to maintain alphabetical order of definitions. The definition was modified to delete obsolete language relating to accreditation associations and to clarify the accreditation bodies acceptable to the board.

Change: Regarding the definition of "client" in §801.2(7), the definition was modified to clarify that a client is a person who receives services from a license holder.

Change: Regarding the definition of "party" in §801.2(22), the definition was amended to read as it did prior to the proposed change, referencing persons or entities having a justiciable interest in a matter.

Change: Regarding the initial associate licensure fee referenced in proposed §801.18(b)(8), the fee is deleted and the section renumbered accordingly. The initial license fee referenced in §801.18(b)(3) is inclusive of the initial associate license fee.

Change: Regarding §801.42, the first sentence was shortened to improve clarity and structure.

Change: Regarding §801.42(17), the word "and" is deleted to improve clarity and structure.

Change: Regarding new §801.42(19), the rule is added to clarify that "any other related services provided by a licensee" are professional therapeutic services which may be provided by a license holder.

Change: Regarding §801.44(a), the rule is revised to improve clarity and sentence structure.

Change: Regarding §801.45(b), the rule is revised to not delete paragraph (5) as was originally proposed, but to revise the paragraph to clarify that a licensee shall not engage in sexual contact with "a clinical supervisor or supervisee".

Change: Regarding §801.112(b), the rule is revised to reference the term "accredited institutions" and delete obsolete language.

Change: Regarding §801.142, the section title is revised to better reflect the section's content.

Change: Regarding §801.142(a)(1) and (2), the paragraphs are revised to clarify supervised clinical experience and sentence structure.

Change: Regarding §801.142(j), the rule is revised to improve clarity and eliminate the reference to a contract.

Change: Regarding §801.143(a)(3), the rule is revised to provide an additional option for becoming a board-approved supervisor.

Change: Regarding §801.174(f), the rule is revised to clarify that applicants who fail the licensure examination two or more times must identify and complete additional courses of study which address the area(s) of deficit before the board will approve the applicant to reschedule the examination.

Change: Regarding §801.201(a), the rule is revised to improve clarity.

Change: Regarding §801.202(a), the rule is revised to use consistent terminology.

Change: Regarding §801.202(a)(2), the rule is revised to reference the term "accredited institution" and delete obsolete language.

Change: Regarding §801.202(a)(5), the word "licensure" is deleted, as the rule refers to both the licensure and the jurisprudence examinations.

Change: Regarding §801.203(a)(2) and (4)-(6), the rules are revised to delete the word "and" in §801.203(a)(2), to eliminate the reference in proposed §801.203(a)(4) to issuing a provisional license to a person who has not taken a licensure examination, and to revise, improve, and renumber §801.203(a)(5) and (6) to §801.203(a)(4) and (5).

Change: Regarding §801.233, the rule is revised to clarify that it applies to the marriage and family therapist license.

Change: Regarding §801.362(c), the graphic was revised from "NOTICE OF [HEARING/INFORMAL CONFERENCE]" to " NOTICE OF (EITHER HEARING OR INFORMAL CONFERENCE)" to clarify the Notice Of Failure To Appear.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.1, §801.2

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Accredited institutions--An institution which holds accreditation or candidacy status from the American Council on Education (ACE), the Council for Higher Education Accreditation (CHEA), the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE), or the California Bureau for Private Postsecondary and Vocational Education.

(2) Act--The Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Occupations Code, Chapter 502.

(3) Administrative Law Judge (ALJ)--A person within the State Office of Administrative Hearings who conducts hearings under this subchapter on behalf of the Board.

(4) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(5) Associate--A licensed marriage and family therapist associate.

(6) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(7) Client--An individual, family, couple, group, or organization who receives services from a person identified as a marriage and family therapist who is either licensed or unlicensed by the board.

(8) Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

(9) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(10) Department--The Texas Department of State Health Services.

(11) Family systems--An open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(13) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(14) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(15) Investigator--A professional complaint investigator employed by the Texas Department of State Health Services.

(16) License--A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(17) Licensed marriage and family therapist--An individual who offers to provide marriage and family therapy for compensation.

(18) Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(19) Licensed marriage and family therapist associate--An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(20) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and tech-

niques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(21) Month--A calendar month.

(22) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(23) Person--An individual, corporation, partnership, or other legal entity.

(24) Pleading--Any written allegation filed by a party concerning its claim or position.

(25) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2,(g)(5)(i), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(26) Supervision--The guidance or management in the provision of clinical services.

(27) Supervisor--A person meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise an associate and/or marriage and family therapist.

(28) Texas Open Meetings Act--Government Code, Chapter 551.

(29) Texas Public Information Act--Government Code, Chapter 552.

(30) Therapist--For the purposes of this chapter, a Texas licensed marriage and family therapist.

(31) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603184

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Chair
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: December 23, 2005
For further information, please call: (512) 458-7111 x6972

SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.18

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.18. Fees.

(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

(1) application fee--$40;

(2) licensure examination fee--shall be in accordance with the current contracted examination fee;

(3) initial licensure fee issued for a two-year term--$90;

(4) biennial renewal fee--$130;

(5) late renewal fee--late renewal fees shall be set as follows:

(A) on or before 90 days--biennial renewal fee plus one-half of the current contracted examination fee; and

(B) longer than 90 days but less than one year--biennial renewal fee plus fee equal to the current contracted examination fee;

(6) inactive status (administrative) fee--$75;

(7) duplicate license fee--$10;

(8) provisional licensure fee--$40;

(9) continuing education sponsor fee--$50 annually;

(10) child support reinstatement fee--$40;

(11) verification fee--$10; and

(12) student loan default reinstatement fee--$40.

(c) All fees are nonrefundable.

(d) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council.)

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. All fee changes shall be made through rulemaking procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: December 23, 2005
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22 TAC §801.18, §801.19

STATUTORY AUTHORITY

The adopted repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.41 - 801.54

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.42. Professional Therapeutic Services.

The following are professional therapeutic services which may be provided by a marriage and family therapist:

(1) marriage therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing marriage life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of either partner;

(2) sex therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(3) family therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a family member;

(4) child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child;

(5) play therapy which utilizes systems, methods, and processes which include play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(6) individual psychotherapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual;

(7) divorce therapy which utilizes systems, methods, and processes which include interpersonal, cognitive, cognitive behavioral, developmental, psychodynamic, affective and family system methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of the partners;

(8) mediation which utilizes systems, methods, and processes to facilitate resolution of disputes between two or more dissenting parties, including but not limited to any issues in divorce settlements, parenting plan modifications, parent-child conflicts, pre-marital agreements, workplace conflicts, and estate settlements. Mediation involves specialized therapeutic skills that foster cooperative problem

solving, stabilization of relationships, and amicable agreements. Court appointed mediation requires specialized training period;

(9) group therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span;

(10) chemical dependency therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective methods and strategies, and 12-step methods to promote the healing of the client;

(11) rehabilitation therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(12) referral services which utilizes systems methods and processes which include evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family;

(13) diagnostic assessment which utilizes the knowledge organized in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as the International Classification of Diseases (ICD) as part of their therapeutic role to help individuals identify their emotional, mental, and behavioral problems when necessary;

(14) psychotherapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(15) hypnotherapy which utilizes systems methods and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(16) biofeedback which utilizes systems methods and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education;

(17) assessment and appraisal which utilizes systems methods and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems;

(18) consultation which utilizes systems, methods, and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations; and

(19) any other related services provided by a licensee.

§801.44. Relationships with Clients.

(a) A therapist shall make known to a prospective client the important aspects of the professional relationship, including but not limited to office procedures, after-hours coverage, fees, and arrangements for payment which might affect the client's decision to enter into the relationship.

(b) No commission or rebate or any other form of renumeration shall be given or received by a therapist for the referral of clients for professional services.

(c) A therapist shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(d) A therapist shall not engage in activities that seek to meet the therapist's personal needs instead of the needs of the client.

(e) Under normal circumstances a therapist shall not be involved in the therapy of family members, intimate friends, close associates, or others whose welfare might be jeopardized by such a dual relationship.

(f) A therapist shall be responsible for setting and maintaining professional boundaries.

(g) A therapist may disclose confidential information to medical or law enforcement personnel if the therapist determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(h) In group therapy settings, the therapist shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(i) A therapist shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes, and billing information for a minimum of five years for an adult client and 5 years beyond the age of 18 years of age for a minor.

(j) A therapist shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(k) A therapist shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it.

(l) A licensee who engages in interactive therapy via the telephone or internet must provide the client with his/her license number and information on how to contact the board by telephone or mail, and must adhere to all other provisions of this chapter.

§801.45. Sexual Misconduct.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mental health services--The assessment, diagnosis, treatment, or therapy in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider--A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of the Act.

(3) Sexual contact--

(A) deviate sexual intercourse as defined by Penal Code, §21.01;

(B) sexual contact as defined by Penal Code, §21.01;

(C) sexual intercourse as defined by Penal Code, §21.01;

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(4) Sexual exploitation--A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice.

(5) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

(b) A licensee shall not engage in sexual contact with a person who is:

(1) a client;

(2) a former client with whom there has been no therapeutic contact for a minimum of two years;

(3) an associate or an intern for whom the licensee has administrative or clinical responsibility;

(4) an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services; or

(5) a clinical supervisor or supervisee of the licensee.

(c) A therapist shall not provide therapeutic services to a person with whom the therapist has had a sexual relationship.

(d) A licensee shall not practice therapeutic deception or sexual exploitation.

(e) Because sexual contact with former clients are so frequently harmful to the client, and because such contacts undermine public confidence in the marriage and family therapy profession and thereby deter the public's use of needed services, marriage and family therapists do not engage in sexual contact with former clients even after a two year interval except in the most unusual circumstances. The marriage and family therapists who engages in such activity after the two years following cessation or termination of therapy bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(1) the amount of time has passed since therapy terminated;

(2) the nature and duration of the therapy;

(3) the circumstances of termination;

(4) the client's personal history;

(5) the client's current mental status;

(6) the likelihood of adverse impact on the client and others; and

(7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.

(f) It is not a defense under subsections (b)-(d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(g) Examples of sexual exploitation are:

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments to or about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(7) initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;

(11) any bodily exposure of genitals, anus, or breasts;

(12) encouraging a client, student, associate, or former client to masturbate in the presence of the licensee; and

(13) masturbation by the licensee when a client, student, associate, or former client is present.

(h) Examples of sexual contact are:

(1) genital and genital contact;

(2) genital and anal contact;

(3) genital and oral contact;

(4) genital and any object contact;

(5) anal and any object contact;

(6) touching breasts;

(7) touching genitals;

(8) touching anus; and

(9) touching buttocks.

(i) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or mental health services provider during therapy or any other course of treatment, the licensee shall report alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

(A) the district attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.73

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

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SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

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SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.114

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code,

§502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.112. General.

(a) The board shall accept as meeting licensure requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and coursework received at foreign universities shall be acceptable only if such coursework may be counted as transfer credit by accredited institutions. It is the applicant's responsibility to have degrees and coursework evaluated by a professional transcript evaluation service approved by the board.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.

(g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.142. Supervised Clinical Experience Requirements and Conditions.

(a) The applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(1) includes at least 3,000 hours of clinical services to individuals, couples or families, of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc; and

(2) the applicant must be supervised in a manner acceptable to the board, including:

(A) at least 200 hours of supervision;

(B) of the 200 hours, at least 100 hours must be individual supervision;

(C) of the 200 hours, no more than 100 hours may be transferred from the graduate program;

(D) at least 50 hours of the post-graduate supervision must be individual supervision.

(b) An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(c) During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(d) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.

(e) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision.

(f) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(g) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(h) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes.

(i) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(j) The associate may receive credit for up to 500 clock hours toward the required 3,000 hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.

§801.143. Supervisor Requirements.

(a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting an application which includes documentation and verification of the following:

(1) a license (which is not a provisional or an associate license) issued by the board or a license as a marriage and family therapist in another state or territory;

(2) a graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from an accredited institution as defined in §801.2 of this title (relating to Definitions);

(3) one of the following:

(A) successful completion of a one-semester graduate course in marriage and family therapy supervision from an accredited institution; or

(B) a 40 hour continuing education course in clinical supervision offered by a board approved provider; and

(4) at least 3,000 hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.

(b) In lieu of meeting the qualifications set forth in subsection (a) of this section, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American Association of Marriage and Family Therapy (AAMFT) before the person provides any supervision.

(c) A supervisor may not be employed by the person whom he or she is supervising.

(d) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §801.144

STATUTORY AUTHORITY

The adopted repeal is authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

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SUBCHAPTER H. EXAMINATIONS

22 TAC §§801.171 - 801.174

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.174. Licensure and Jurisprudence Examinations.

(a) The licensure examination shall be a written examination prescribed by the board which has been validated by an independent testing professional.

(b) An applicant shall apply to take the licensure examination on a form prescribed by the board. The applicant will pay the examination fee at the examination site.

(c) The board, or its designee, shall determine the times and places for licensing examinations and give reasonable public notice.

(d) The board, or its designee, shall notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the board is notified of a potential delay of notification of exam results, the board shall notify the examinee as soon as possible regarding the delay.

(e) Procedures for failure of an applicant to pass a licensure examination are as follows:

(1) An applicant who fails an examination may retake the examination at the next scheduled date.

(2) Fee for the examination is in accordance with subsection (b) of this section.

(3) The applicant must reschedule the examination and resubmit the examination fee.

(4) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee

(f) If an applicant fails the licensure examination two or more times, the board may require the applicant to identify additional courses of study which address the area(s) of deficit; and present satisfactory evidence of completion of the courses before approving the applicant to reschedule the licensure examination.

(g) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application.

(h) The jurisprudence examination must have been completed no more than six months prior to the licensure application date.

(i) The jurisprudence examination is available as an online learning experience and applicable fees are payable directly to the approved vendor.

(j) The jurisprudence examination content is based on the Act, the rules of the board, and other state laws and rules that relate to the practice of marriage and family therapy.

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SUBCHAPTER I. ISSUANCE OF LICENSE

22 TAC §§801.201, 801.202, 801.204

STATUTORY AUTHORITY

The adopted repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

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SUBCHAPTER I. LICENSING

22 TAC §§801.201 - 801.203

STATUTORY AUTHORITY

The adopted new sections and amendment are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.201. General Licensing.

(a) Upon receipt and approval of application documentation and required fees, the board shall issue the person a license containing a license number within 30 days.

(b) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the therapist and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the therapist's original license or be accompanied by the damaged certificate.

(c) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for a second place of practice which is designated in a licensee's file.

§801.202. Associate License.

(a) An associate license shall be issued to an applicant who has:

(1) obtained a master's or doctorate degree in marriage and family therapy or a related mental health field with course work and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);

(2) submitted an official graduate transcript from an accredited institution;

(3) submitted a complete application and all applicable fees to the board;

(4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor and that the supervisor has met the requirements of §801.143 of this title (relating to Supervisor Requirements); and

(5) submitted proof of successful completion of the required examinations.

(b) The initial associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months. The appropriate board committee may consider exceptions to the 72 month time limit.

§801.203. Provisional License.

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration was obtained, were substantially equivalent to the requirements set out in §801.73 of this title (relating to Required Application Materials);

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the board;

(3) is sponsored by a licensed marriage and family therapist in Texas with whom the provisional license holder may practice under this section;

(4) provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Licensure); and

(5) meets any other requirements set forth under the Act.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examination required by Subchapter H of this chapter (relating to Licensure Examinations);

(2) the provisional license holder provides an official graduate transcript meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter; and

(4) the provisional license holder meets any other requirements set forth under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

TRD-200603194
Wayne Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: December 23, 2005
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER J. LICENSURE RENEWAL AND INACTIVE STATUS

22 TAC §§801.231 - 801.237

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.233. Staggered Renewals.

The board shall use a staggered system for licensure renewals. The renewal date of a marriage and family therapist license shall be the last day of the licensee's birth month.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.261 - 801.268

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291 - 801.302

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

STATUTORY AUTHORITY

The adopted amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. INFORMAL CONFERENCES

22 TAC §801.351

STATUTORY AUTHORITY

The adopted amendment is authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair
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SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.361 - 801.369

STATUTORY AUTHORITY

The adopted repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§801.361 - 801.364

STATUTORY AUTHORITY

The adopted new sections are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

§801.362. Notice.

(a) For purposes of contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.

(c) The following statement shall be attached to the notice of hearing or notice of informal conference, in bold letters of at least 10 point type:
Figure: 22 TAC §801.362(c)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Wayne Hinson, Ph.D.
Chair
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 458-7111 x6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. SCHOOL HEALTH ADVISORY COMMITTEE

25 TAC §37.350

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §37.350, concerning the School Health Advisory Committee (committee) without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 52) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The new section complies with Senate Bill 42, 79th Legislature, 2005, (now codified in part as Health and Safety Code, §1001.0711), which requires the department to provide assistance to the State Health Services Council (council) in establishing a leadership role for the department in the support and delivery of coordinated school health programs and school health services. Government Code, §2110.008, which allows state agencies to designate a date on which the committee will automatically be abolished, does not apply to a committee created under this section.

Senate Bill 42, 79th Legislature, 2005, established a comprehensive school health education package for public primary and secondary schools. The legislation focuses on health education, physical activity, and nutrition services. It: (1) cites proper nutrition and exercise as the focus of health for the required enrichment curriculum in kindergarten through grade 12; (2) authorizes the State Board of Education (SBOE) to adopt rules for expansion of the requirement for daily physical activity into middle school and junior high school; (3) provides for coordinated school health programs to be made available for middle schools and junior high schools; (4) holds districts accountable for the bill's requirements by requesting information on student health and physical activity; and (5) establishes a state-level school health advisory committee.

The 76th, 77th and 78th Legislative Sessions created and modified School Health Advisory Councils (SHAC) at the school district level for the purpose of advising local school boards on coordinated school health programs, based on the needs of the individual district. Research has shown that having an active SHAC promotes district-wide coordinated school health.

The establishment of a state-level committee with a membership that reflects the broad diversity of our challenging school health issues, adds another dimension to the systematic dissemination of coordinated school health programming and services in Texas. The law mandates that a representative from the Texas Education Agency and the Texas Department of Agriculture serve as members of the committee. Additional members with a broad range of school health experience will strengthen the knowledge base of the committee. The membership nomination process combines Health and Human Services Commission guidelines, research-based criteria, stakeholder input, and department staff guidance.

SECTION-BY-SECTION SUMMARY

New §37.350 establishes the committee and provides procedures for its operation. Specifically, the section includes language describing how the committee is appointed and governed; states the applicable laws to which the committee is subject; explains the purpose of the committee; details the composition of its membership; and, outlines procedures relating to terms of membership and office, attendance, staff support, parliamentary procedures, establishment of subcommittees, statements by members, reporting processes to the council and expenses reimbursement policies.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The new section is adopted under the Health and Safety Code, §1001.0711, which requires the Health and Human Services Commission to establish this advisory committee; Government Code, §2110.005, which requires state agencies to state the purpose and manner of reporting in rules, for each advisory committee; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603103
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: June 29, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER A. PERFUSIONISTS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§140.1, 140.3 - 140.5, and 140.7 - 140.21; new §§140.2, 140.6, and 140.22; and the repeal of §140.2 and §140.6, concerning the licensing and regulation of perfusionists. New §140.2 and §140.22, and amendments to §§140.5, 140.8, 140.12, and 140.16 are adopted with changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8389). The amendments to §§140.1, 140.3, 140.4, 140.7, 140.9 - 140.11, 140.13 - 140.15, and 140.17 - 140.21, new §140.6, and the repeal of §140.2 and §140.6 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Through the enactment of Senate Bill 403, 79th Legislature, Regular Session (2005), Sunset legislation, codified in Occupations Code, Chapter 603, relating to the continuation and functions of the Texas State Board of Examiners of Perfusionists (board), the Governor and Legislature have directed that the State Board of Examiners of Perfusionists be abolished and has been replaced by the Texas State Perfusionist Advisory Committee. Also, revisions to the rules are due to House Bill 2680, 79th Legislature, Regular Session (2005), codified in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including licensed perfusionists, engaged in the provision of voluntary charity care. In addition, the legacy board and rules were located at Title 22, Part 33, Chapter 761, and were transferred to this chapter on September 1, 2005.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 140.1 - 140.21 have been reviewed and the need for the rules continues to exist; however revisions are necessary to implement recent legislation and to update and clarify the rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§140.1, 140.3 - 140.5, and 140.7 - 140.21 also reflect changes to Texas Occupations Code, Chapter 603, relating to the abolishment of the board, the former licensing authority, and the transfer of the board's functions variously to the department, the Commissioner of the Department of State Health Services (commissioner), and the executive commissioner.

Repeal of §140.2 (relating to the board, which has been abolished) and §140.6 (relating to an exemption from licensure, which has been repealed) is being adopted in accordance with Senate Bill 403 of the 79th Regular Legislative Session.

New §140.2 (relating to Fees), §140.6 (relating to the new Jurisprudence Examination), and §140.22 (relating to new Texas State Perfusionist Advisory Committee (Committee)), are adopted to incorporate existing rule language from the sections being repealed which is still required, and to implement recent legislation.

Amendments to §140.1 reflect the abolishment of the board and the transfer of the board's functions to other governmental entities. The section has been renumbered to reflect deletions and insertions.

New §140.2 includes the same rule language related to fees previously included in the section proposed for repeal. The only new language is found at §140.2(1)(F), which reflects the new late renewal fees that become effective September 1, 2007, and §140.2(1)(K), which sets reduced renewal fees for a retired perfusionist performing voluntary charity care.

Amendments to §§140.3 - 140.5 reflect the transfer of the board's authority to the department.

New §140.6 sets out the department's procedures for establishing and administering a new jurisprudence examination.

Amendments to §§140.7 - 140.11 reflect the transfer of the board's authority to the department.

Amendments to §140.12 reflect the transfer of the board's authority to the department, and contain non-substantive wording changes to clarify the rules. New §140.12(a)(8) reflects the department's authority to refuse to renew a license based on non-payment of an administrative penalty assessed by the department. Amendments to §140.12(c) - (d) reflect the reduction of the period in which a licensee may submit a late renewal from two years to one year. New §140.12(f) establishes reduced renewal fees and continuing education requirements for retired perfusionists providing voluntary charity care.

Amendments to §140.13 reflect the transfer of the board's authority to the department. New §140.13(d) establishes reduced continuing education requirements for retired perfusionists pro-

viding voluntary charity care equal to two thirds of the amount of hours required for license renewal by a licensed perfusionist.

Amendments to §140.14 reflect the transfer of the board's authority to the department, and include new language referencing additional disciplinary authority granted to the department to refuse to renew a license.

Amendments to §140.15 reflect the transfer of the board's authority to the department, and delete unnecessary references to the department's mailing address. New §140.15(h) reflects the department's authority to issue a cease and desist order, and to impose an administrative penalty for a violation of that order.

Amendments to §140.16 reflect the transfer of the board's authority to the department.

Amendments to §140.17 reflect the transfer of the board's authority to the department. New §140.17(s) reflects the department's authority to enter into an agreed order requiring a licensee to pay a refund to a consumer as provided in the agreement.

Amendments to §§140.18, 140.19, and 140.20 reflect the transfer of the board's authority to the department, and license sanctioning.

Amendments to §140.21 add an administrative penalty schedule to the existing severity levels and sanctions guide.

New §140.22 sets out the department's policies and procedures for establishing and administering the new Texas State Perfusionist Advisory Committee.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes that will improve the accuracy of the sections.

Change: Concerning §140.2(a)(6)(A) and (B), the word "or" was added to the end of subparagraph (A) and the period at the end of subparagraph (B) is deleted and replaced with a semi-colon in order to correct the punctuation and paragraph structure; and concerning §140.2(a)(11), a period was added to the end of the sentence.

Change: Concerning §140.5(b)(2) and (3), the word "board" was changed to "department" to correctly reflect the transfer of the board's authority to the department.

Change: In order to correct punctuation in the rule text, in §140.8(e)(3), a period was added at the end of the first sentence; in §140.22(e), a comma has been added after the word "color"; in §140.22(h)(2), a comma has been added after the word "commissioner"; and in §140.22(n), the period after the word "Act" has been changed to a comma.

Change: In order to correct grammar in the rule text, in §140.12(d)(2), the word "years" was replaced with the word "year" following the word "one"; in §140.12(f)(3), one of the words "education" was removed to correctly read "continuing education hours" instead of "continuing education education hours"; in §140.16(a), the word "to" that was in front of the word "refusal" has been deleted; and in §140.22(g)(2), the word "purposed" has been corrected to read "purposes".

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§140.1 - 140.22

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by Texas Occupations Code, Chapter 603; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§140.2. Fees.

(a) The schedule of fees for licensure as a perfusionist or a provisional licensed perfusionist is as follows:

(1) application and initial license fees--$175;

(2) license fee for upgrade of provisional licensed perfusionist--$75;

(3) a license renewal issued for a one-year term--$175;

(4) a license renewal issued for a two-year term--$350;

(5) late renewal fee (prior to September 1, 2007)--$100;

(6) late renewal fee (on or after September 1, 2007):

(A) less than 90 days late--a fee that is equal to 1/4 times the amount of the renewal fee due; or

(B) more than 90 days and less than one year late--a fee that is equal to 1/2 times the amount of the renewal fee due;

(7) license certificate and identification card replacement fee--$10;

(8) child support reinstatement fee--$40;

(9) student loan default reinstatement fee--$40;

(10) verification fee--$10 per licensee; and

(11) retired perfusionist license renewal issued for a two-year term (in accordance with §140.12(f) of this title relating to License Renewal)--$175.

(b) An applicant whose check for the application fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(c) A licensee whose check for the renewal fee is not honored by the financial institution may remit to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be subject to revocation.

(d) Fees paid to the department by applicants are not refundable.

(e) Any remittance submitted to the department in payment of a required fee must be in the form of a personal check, certified check, or money order.

(f) The department shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

(g) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§140.5. Examination Procedures for Perfusionist Licensure.

(a) Frequency. Examinations will be administered for the department at least once each year by a designee of the department.

(b) Requirements.

(1) The executive secretary shall notify an applicant when all requirements for licensure have been met except the taking and passing of the required examination. The department shall forward or cause to be forwarded an examination registration form to each approved applicant as soon as the application has been approved.

(2) An applicant who wishes to take a scheduled examination must complete the examination registration form which must be received by the department or designee by the deadline established by the department. The fee shall be paid to the designee of the department.

(3) The examination for licensure shall be an examination approved by the department. A designee of the department shall administer and grade examinations and report to the department if the applicant has passed or failed the examination.

(4) If an applicant has already successfully completed the required examination or the examination administered by the American Board of Cardiovascular Perfusion (ABCP), the applicant shall not be required to be reexamined, provided the applicant furnishes the department a copy of the test results indicating that the applicant passed the examination and proof that he or she has been certified by the ABCP for some time period within three years immediately preceding date of application.

(5) An applicant who fails four examinations may not reapply as a provisional licensed perfusionist.

§140.8. Determination of Eligibility.

(a) The department shall notify an applicant in writing of the receipt of the applicant's application and any other relevant evidence relating to qualifications established by rule. The notice must state whether the applicant has qualified for examination or licensure based on the application and other submitted evidence. If the applicant is not qualified, the notice must state the reasons for the applicant's failure to qualify.

(b) The department may deny the application if the person has:

(1) not completed the requirements in §761.4 of this title (relating to Educational Requirements for Licensure).

(2) failed to pass the examination prescribed by the department as set out in §140.5 of this title (relating to Examination Procedures for Perfusionist Licensure), if applicable;

(3) failed to remit any applicable fees required in §140.2 of this title (relating to Fees);

(4) failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department to verify the applicant's qualifications for licensure;

(5) been in violation of the Act, the Code of Ethics, or any other provision of this title;

(6) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §140.14 of this title (relating to Licensing of Persons with Criminal Backgrounds To Be a Licensed Perfusionist and Provisional Licensed Perfusionist), and in Texas Occupations Code, Chapter 53.

(7) had a license, registration, certificate, or certification to practice perfusion in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or American Board of Cardiovascular Perfusion; or

(8) demonstrated lack of necessary skills and ability to provide adequate perfusion services.

(c) If after review, the department determines that the application should not be approved, the executive secretary shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing and an informal settlement conference. The notice and hearing shall be in accordance with §140.15 of this title (relating to Violations, Complaints, and Subsequent Department Actions).

(d) An applicant whose application has been denied under subsection (b)(4), (5), (6), (7), or (8) of this section shall be permitted to reapply after a period to be determined by the department. The applicant shall submit with the reapplication, proof satisfactory to the department of compliance with all rules of the department and the provisions of the Act in effect at the time of reapplication.

(e) Processing procedures are as follows.

(1) Time periods. The department shall comply with the following procedures in processing application for licensure and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for licensure - 14 working days;

(ii) letter of application deficiency - 14 working days; and

(iii) issuance of license renewal after receipt of documentation of all renewal requirements - 30 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time period for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(i) letter of approval examination - 20 working days;

(ii) initial letter of approval for licensure (exam waived) - 20 working days;

(iii) letter of denial of licensure - 20 working days;

(iv) issuance of license renewal after receipt of documentation of all renewal requirements - 30 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in the particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if:

(i) the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; or

(ii) another public or private entity relied upon by the department in the application process caused the delay; or

(iii) any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the executive secretary, the applicant may appeal in writing to the department. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the commissioner is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§140.12. License Renewal.

(a) General.

(1) When issued, a license is valid until the licensee's next birth month.

(2) A licensee must renew the license annually or biannually, as determined by the department.

(3) The renewal date of a license shall be the last day of the licensee's birth month.

(4) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the executive secretary prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(5) The department shall not renew the license of the licensee who is in violation of the Act or rules at the time of application for renewal.

(6) The department shall deny renewal of the license of a licensee if renewal is prohibited by the Education Code, §57.491 relating to student loan default.

(7) The department shall deny renewal of the license of a licensee for whom a contested case is pending until resolution of the case, but such individual remains licensed pending resolution of the contested case, if timely application for renewal is made.

(8) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(9) A licensee who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(10) A licensee shall pay a late renewal fee as set out in §140.2 of this title (relating to Fees) prior to issuance of the license under this section.

(b) License renewal requirements.

(1) At least 30 days prior to the expiration date of a person's license, the executive secretary shall send notice to the licensee at the address in the department's records of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the department with the required renewal fee. The return of the completed renewal form in accordance with the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor and felony convictions. The license renewal form for the provisional licensed perfusionist shall be signed by the supervising licensed perfusionist or approved licensed physician and indicate whether the supervisor and supervisee have complied with this chapter.

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the executive secretary prior to the expiration date of the license. The postmark date shall be considered as the date of mailing.

(4) The department shall issue to a licensee who has met all requirements for renewal a license certificate and identification card.

(c) Late renewal requirements.

(1) The executive secretary shall inform a person who has not renewed a license after a period of more than 90 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(2) A person whose license has expired for not more than one year may renew the license by submitting the license renewal form and the appropriate renewal and late renewal fees to the executive secretary. The renewal is effective if it is mailed to the executive secretary within one year after the expiration date of the license. The postmark date shall be considered as the date of mailing.

(3) A person whose license has been expired one year or more may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(d) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he has the title of "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP", and may not use any facsimile of those titles in any manner.

(2) A person who fails to renew a license after one year shall surrender the license certificate and license identification card to the department.

(e) Active duty. If a licensee fails to timely renew his or her license on or after August 1, 1990, and the licensee is or was on active duty with the armed forces of the United States of America, the licensee may renew the license in accordance with this subsection.

(1) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license.

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the late renewal fee.

(f) Renewal for Retired Perfusionists Performing Voluntary Charity Care.

(1) A "retired perfusionist" is defined as a person who is:

(A) above the age of 55; and

(B) is not employed for compensation in the practice of perfusion; and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of perfusion by a retired perfusionist without compensation or expectation of compensation.

(3) A retired perfusionist providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired perfusionist renewal fee required by §140.2 of this title (relating to Fees); and the continuing education hours required by §140.13 of this title (related to Minimum Continuing Education Requirements).

§140.16. Formal Hearings.

(a) General. This section covers the formal hearing procedures and practices that will be used by the department in handling suspensions, revocation of license, denial of licenses, probating a license suspension, reprimanding a licensee, or refusal to renew a license. Such hearing will be conducted pursuant to the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and will be held by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the administrative law judge may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3) All parties shall timely notify the administrative law judge of any changes in their mailing addresses.

(c) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(d) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(e) Final orders or decisions.

(1) The final order or decision will be rendered by the department. The department is not required to adopt the recommendation of an administrative law judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by a representative of the department.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

§140.22. Texas State Perfusionist Advisory Committee.

(a) Officers.

(1) The Presiding Officer shall be designated by the commissioner and serve at the pleasure of the commissioner.

(2) The Assistant Presiding Officer shall perform the duties of the presiding officer in case of the absence or disability of the chairman.

(3) In case the presiding officer becomes vacant, the assistant presiding officer shall serve until a successor is appointed by the commissioner.

(b) Meetings.

(1) The committee shall meet only to conduct committee business.

(2) Special meetings may be called by the commissioner at such times, dates, and places as become necessary for the transaction of advisory committee business.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(c) Quorum. A simple majority of the committee members is necessary to conduct official business.

(d) Transaction of official business.

(1) The committee may transact official business only when in a legally constituted meeting with a quorum present.

(2) Committee action shall require a majority vote of those members present and voting.

(e) Policy against discrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, color, disability, gender, religion, national origin, geographical distribution, age, physical condition, economic status, sexual orientation, or genetic information.

(f) Conflict of interest. Any committee member who has a conflict of interest regarding any matter before the committee, such as a matter pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this and shall not participate in any committee proceedings involving that individual or matter.

(g) Membership and employee restrictions.

(1) Texas trade association. A cooperative and voluntarily joined statewide association of business or professional competitors in this state designated to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(2) A person may not be a committee member and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (U.S.C. §201 et seq.) if:

(A) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(B) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(3) A person may not be a member of the committee or act as the general counsel to the committee or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(h) Attendance.

(1) Members shall attend regular committee meetings as scheduled.

(2) Upon request, the executive secretary shall report to the commissioner, governor and the Texas Sunset Advisory Commission the attendance records of members.

(3) Except in case of emergency, committee members shall notify the presiding officer or executive secretary at least 48 hours prior to the scheduled meeting if unable to be present.

(4) Except in case of emergency, the executive secretary shall notify the presiding officer at least 48 hours prior to the scheduled meeting if unable to be present.

(5) It is grounds for removal from the committee if a member is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(i) Reimbursement for expense. A member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(j) Rules of order. The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by these committee rules.

(k) Agendas.

(1) The executive secretary shall prepare and submit to each member of the committee, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of committee business which have been approved for discussion by the presiding officer.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(l) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the committee for review and comments prior to approval by the committee.

(2) After approval by the committee, the minutes of any committee meeting are official only when affixed with the original signatures of the presiding officer and the executive secretary and official seal of the committee.

(3) The official minutes of committee meetings shall be kept in the office of the executive secretary and shall be available to any person desiring to examine them during regular office hours.

(m) Official records.

(1) All official records of the committee including application materials, except files containing information considered confidential under the provisions of the Texas Open Records Act, Texas Government Code, Chapter 552, shall be open for inspection during regular office hours.

(2) Official records may not be taken from committee offices; however, persons may obtain photocopies of files upon written request and by paying the cost per page set by the department. Payment shall be made prior to release of the records.

(n) Official seal. The commissioner shall adopt an official seal for use in the course of official committee business as authorized by the Act, §603.151(5).

(o) Registry.

(1) The department shall prepare a registry of licensed perfusionists and provisionally licensed perfusionists that is available to the public, license holders, and appropriate state agencies.

(2) The registry shall include, but not be limited to, the names of current licensees.

(3) An original copy of the registry will be available for inspection by licensees and members of the public in the office of the executive secretary.

(p) Public interest information.

(1) The department shall prepare information of consumer interest describing the profession of perfusion, the regulatory functions of the department, and the procedures by which consumer complaints are filed with and resolved by the department.

(2) The department shall make the information available to the public and appropriate state agencies.

(q) Executive secretary powers and duties. In addition to performing other duties prescribed by this section and by the department, the executive secretary shall:

(1) administer licensing activity for the department;

(2) keep full and accurate minutes of the committee's transactions and proceedings;

(3) serve as custodian of the committee's files and other records;

(4) prepare and recommend to the department plans and procedures necessary to implement the objectives of this chapter, including rules and proposals on administrative procedure;

(5) exercise general supervision over persons employed by the department in the administration of this chapter;

(6) investigate complaints and present formal complaints;

(7) attend all committee meetings as a nonvoting participant;

(8) handle the committee's correspondence; and

(9) obtain, assemble, or prepare reports and other information as directed or authorized by the committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2006.

TRD-200603106
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: June 29, 2006
Proposal publication date: December 16, 2005
For further information, please call: (512) 458-7111 x6972

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25 TAC §140.2, §140.6

STATUTORY AUTHORITY

The adopted repeals are authorized by Texas Occupations Code, Chapter 603; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200603107
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

28 TAC §7.401

The Commissioner of Insurance adopts amendments to §7.401 concerning risk-based capital and surplus requirements for insurers and health maintenance organizations. The section is adopted with a change to the proposal published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3350).

The adopted amendment is necessary to adopt the 2005 National Association of Insurance Commissioners (NAIC) Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2005 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2005 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2005 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. The adopted section also provides for specific actions by the commissioner or the reporting entity when the total adjusted capital of the reporting entity falls to certain levels specified in the section. Finally, the adopted section is necessary to effect the consolidation of the existing risk-based capital rules. A minor change was made in §7.401(b)(4)(C) to update the Insurance Code reference for consistency with the revised code project enacted by the Texas Legislature.

The risk-based capital requirement is a method of ensuring that an insurer has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of an insurer. The adopted section will provide the department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for an insurance company to support its overall business operations in consideration of its size and risk exposure and provide for specific actions by the commissioner or the reporting entity when the total adjusted capital of the reporting entity falls to certain levels.

No comments were received.

The amendment is adopted under the Insurance Code, Articles 1.10, 1.32, 21.28-A, §§36.001, 541.401, 822.210, 841.205, 843.404, 885.401, and 884.206. Article 1.10, §5 addresses the duties of the department when an insurer's solvency is impaired. Article 1.32 authorizes the commissioner to fix standards for evaluating the financial condition of an insurer. Article 21.28-A addresses the prevention of insurer delinquencies

and in §2(b) provides that the term "insolvency" of an insurer "and the phrases in further identity of insurer delinquency and threatened insurer delinquency" mean and include any one or more of several statutorily specified conditions, including if a company's required surplus, capital, or capital stock is impaired to an extent prohibited by law and in §11 authorizes the commissioner to adopt reasonable rules as necessary for augmentation and accomplishment of Article 21.28-A, including its purposes. Section 541.401 authorizes the commissioner to adopt rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Sections 822.210, 841.205, 884.206 authorize the commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 authorizes the commissioner to require each fraternal benefit society to file an annual report on the society's financial condition, including any information the commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the department to use the annual report in determining a society's financial solvency. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§7.401. Risk-Based Capital and Surplus Requirements.

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes life insurance, annuity contracts or liability on, or indemnifies any one person for, any risk under a health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of $10,000 including: capital stock companies, mutual life companies, fraternal benefit societies, and stipulated premium companies doing business in other states. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section. This section does not apply to stipulated premium companies only doing business in Texas.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of the Insurance Code §§822.210 and 982.106, excluding those insurers that are only authorized to write mortgage guaranty insurance in all states in which they are licensed and excluding those insurers that write business only in this state and are not required by law to have capital stock.

(3) Health Maintenance Organizations and insurers required to file the NAIC Health Blank. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and insurers that file the NAIC Health Blank with the department under department filing requirements.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accordance with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC formula--NAIC risk-based capital formula.

(5) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(6) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accordance with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2005 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2005 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2005 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2005 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies, except fraternals, subject to this section are required to file electronically with the NAIC in accordance with and by the due date specified in the RBC instructions.

(2) Fraternals shall maintain a paper copy of the report for review by the department.

(f) Conflicts. In the event of a conflict between the Insurance Code, any rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. It is the express intent of this section that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies do not repeal or modify or amend any rule of the department or any provision of the Insurance Code.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital require the following actions related to an insurer within the specified ranges:

(1) An insurer reporting total adjusted capital of 150% to 200% of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the conditions that contribute to the

company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the company's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the insurer's business. The RBC plan is to be submitted within 45 days. After review the commissioner will notify the company if the plan is satisfactory. In the event the commissioner notifies the company that the plan is not satisfactory, the company shall prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the next lower action level described in this subsection.

(2) An insurer reporting total adjusted capital of 100% to 150% of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, an insurance company is also required to file an RBC plan or revised RBC plan within 45 days, and the commissioner is required to perform any examinations or analyses to the insurer's business and operations that is deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) An insurer reporting total adjusted capital of 70% to 100% of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the higher action levels, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place an insurer under regulatory control.

(4) An insurer reporting total adjusted capital of less than 70% of authorized control level triggers a mandatory control level which subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by the Insurance Code Article 1.32, and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by the Insurance Code Articles 1.10, §5 or 841.206; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) A life insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200% and 250%. Any life insurer that trends below 190% of total adjusted capital to authorized control level risk-based capital would trigger the company action level.

(6) A property and casualty insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200% and 300%. If the result of the trend test as determined by the formula is "YES", the insurer triggers regulatory attention at the Company Action Level on the trend test. For the year 2005 only, the first year of this trend test, the trend test will be for information purposes only.

(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to any component derived in the calculation, by any insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited. Any violation of this subsection may be considered a violation of Insurance Code Article 21.21 §(4)(2).

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of insurers subject to this section and in taking corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

(j) Limitations. In no event shall the requirements of this section reduce the amount of capital and surplus otherwise required by provisions of the Insurance Code or the Texas Administrative Code, or by authority of the commissioner of insurance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2006.

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Brenda Caldwell
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Effective date: July 2, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.22, §58.23

The Texas Parks and Wildlife Commission adopts amendments to §58.22, concerning Commercial Fishing, and §58.23, concerning Non-Commercial (Recreational) Fishing, without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3351).

Responsibility for adopting rules covering the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapter 76.

Following extensive discussions with the department's Oyster Advisory Committee, the department published a proposal in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4195) to reduce the daily limit of oysters taken for commercial purposes and to implement a new standard for the quantitative measurement of oyster harvests. The amendments were adopted and the department published a notice of adoption in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6935). The pur-

pose of the rulemaking was to promote efficiency in the utilization of oyster resources by providing a more stable price structure for oysters over the duration of the open season. The rulemaking was expected to lengthen the productive part (in terms of sacks per vessel landed) of the season. If landings are more stable, a more stable average price throughout the season can be expected, which should create overall economic benefits for the industry. An argument could be made that catching more sacks per trip will increase efficiency and create more catch per unit of effort, leading to greater net profits. If price did not decline during such early harvest peaks, that might in fact be the case; however, dealers indicated that prices decline due to the high harvest levels at the beginning of the season.

The 2004 oyster season was used as an example of a volatile market. Landings declined during the season from an initial average of 7,973 sacks per day (November 2003) to an average 2,868 sacks per day by the last month of the season (April 2004). The corresponding average price per sack in November 2003 was $14.11 per sack and the average of April 2004 was $15.28 per sack. This indicates the price at the beginning of the season was 7% lower than the price at the end of the season, without accounting for any quality differences that may have occurred between the fall and spring seasons. If a fisherman who could catch 150 sacks per day at the beginning the season maintained this proportion of the catch throughout the season, only 53 sacks per day would be caught in the last month. Gross receipts would begin the season at $2,115 per day and drop to $824 per day by the end of the season.

In contrast, the 2003 oyster season was used as an example of a more stable market. Landings declined slightly during the season from an initial average of 5,753 sacks per day (November 2002) to an average 3,595 sacks per day by the last month of the season (April 2003). The corresponding average price per sack in November 2002 was $14.42 per sack and the average of April 2003 was $14.47 per sack. If a fisherman who could catch 150 sacks of oysters per day at the beginning the season maintained this proportion of the catch throughout the season, landings (total sacks) would be approximately 18% higher than total landings during the 2004 season example above. Gross receipts would begin the season at $2,163 per day and end the season at $1,356 per day, and total gross receipts under this scenario would be 19.7% higher than total gross receipts under the 2004 example above.

The rationale behind the rulemaking was that to receive the benefits of a stable market in a majority of future seasons, the daily harvest had to be reduced to a level that would allow the total available oysters in Texas bays to be reduced at a slower rate through the season than can be routinely obtained with the higher bag limit. Intuitively, this would suggest a significant reduction in gross receipts due to the significant reduction in bag. However, the behavior of the market itself provides benefits to the fisherman. If a fisherman during the 2003 season (i.e., used as the stable example above) could catch 90 sacks of oysters per day at the beginning the season and maintain this average catch rate throughout the season, landings (total sacks) would be roughly equivalent to the total landings during the 2004 season example above. However, gross receipts would begin the season at $1,298 per day and end the season at $1,301 per day, and total gross receipts under this scenario would be 1.6% higher than total earnings under the 2004 example above. Fishermen will be impacted by this proposal; however, it is expected that the benefits to fishermen will off set the negative impacts of a reduced bag on early season efficiency.

In itself, reducing the amount of oysters taken by an individual boat would not have accomplished this or any other management goal had not the 79th Legislature limited the number of boats allowed to fish for oysters. Therefore, the proposed rulemaking was consistent with the industry's legislative initiative to limit the number of commercial oyster boat licenses that may be issued for use in Texas waters.

The adopted amendment to §58.22 would establish a specific volume of oysters that could be legally possessed or taken in one day for commercial purposes.

The adopted amendment to §58.23 would establish a specific volume of oysters that could be legally possessed or taken in one day for non-commercial (recreational) purposes. The adopted amendments are necessary to clarify the daily bag limit and unit of measurement for oysters. The adopted amendments are necessary because the department has determined that the current rule language does not clearly convey the intent of the Parks and Wildlife Commission that the 90-sack limit function as a daily bag limit and not solely as a possession limit. Similarly, the recreational bag limit also was intended to be a daily bag limit as well as a possession limit. The adopted amendments are intended to clarify that the daily bag limit for commercial oystermen is 90 sacks per day of legal sized oysters and the possession limit for a commercial oysterman while on the water is also 90 sacks. In addition to the commercial limits, the proposed amendment to §58.23, concerning Non-commercial (Recreational) Fishing, offers a similar clarification for recreational oyster fishermen, stipulating a daily bag limit of two sacks of legal sized oysters, and replaces the 'bushel' with the 'sack' as the standard unit of measure.

The adopted amendment to §58.22 will function by specifying the maximum volume of oysters that may be legally possessed or taken in one day for commercial purposes.

The adopted amendment to §58.23 will function by specifying the maximum volume of oysters that may be legally possessed or taken in one day for non-commercial (recreational) purposes, and by establishing the sack as the standard unit of measure for oysters.

The department received no comments concerning adoption of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter, and §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.60

The Texas Parks and Wildlife Commission adopts an amendment to §65.60, concerning Pheasant: Open Seasons, Bag, and Possession Limits, with changes to the text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3353).

The change corrects a typographical error indicating that the possession limit is six pheasants, rather than six cock pheasants. The change is nonsubstantive, given that the extensive references to cock-only bag limits in the preamble make it clear that the intent of the rulemaking was to have the bag composition of the possession limit mirror that of the daily bag limit.

The adopted amendment increases the daily bag limit and possession limits for pheasant in Texas Panhandle counties (Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger). From 1995 to 2002, the pheasant season in the Panhandle began on the second Saturday in December and ran for 16 consecutive days. In 2002, the department increased the length of the pheasant season in the Texas Panhandle from 16 to 30 days, and began the season one week earlier. The ring-necked pheasant is a polygamous species (the male mates with multiple females). For this reason, a hunting season timed to take place after the majority of breeding has taken place and restricted to males will not affect the overall population, provided the bag limit is not set so high that recuperative potential (the ability of the population to sustain itself at a given population level) is affected. Accordingly, as a precautionary measure, when the department lengthened the season and opened it a week earlier, the bag limit was reduced from three cock pheasant to two.

An analysis of harvest data over the last 11 years (eight years at a three-bird bag limit and three years at the two-bird bag limit) indicates that the long-term average of total harvest has remained essentially unchanged. From 1995 to 2003 (three-bird limit, 16-day season), the average total harvest was approximately 26,000 cocks per year. From 2003 to 2005 (two-bird bag limit, 30-day season), the total harvest averaged 24,000 cocks per year. Hunter success during the period from 1995 to 2003 was approximately 1.25 birds per day, while from 2003 to 2005, it was approximately one bird per day. The estimated number of hunters from 1995 to 2003 averaged 25,900; from 2003 to 2005 it was approximately 24,170. If harvest pressure remains stable at the long-term average (i.e. at between 1.0 and 1.25 birds per day), increasing the bag limit by one cock should result in a total increase of between 1,730 and 2,160 birds per year, which would result in a total harvest less than the average total annual harvest under the three-bird/16-day season structure that was in effect from 1995 to 2003. The department therefore believes that increasing the bag limit by one cock will not result in depletion of the resource.

The possession limit for pheasant is twice the daily bag limit; therefore, in addition to increasing the daily bag limit on male pheasants, the amendment also increases the possession limit to six birds.

The adopted amendment to §65.60 will function by increasing the daily bag and possession limits for pheasant in 37 counties in the Texas Panhandle.

The department received two comments concerning adoption of the proposed amendment. Both comments were in support of adoption.

The Texas Wildlife Association commented in support of adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.60. Pheasant: Open Seasons, Bag, and Possession Limits.

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: First Saturday of December for 30 consecutive days.

(2) Daily Bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(b) In Chambers, Jefferson, and Liberty, counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Daily bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(c) In all other counties, there is no open season on pheasants.

(d) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

31 TAC §§65.190, 65.192, 65.204

The Texas Parks and Wildlife Commission adopts amendments to §65.190 and §65.192, and new §65.204, concerning the Public Lands Proclamation. Section 65.190 is adopted with changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3354). Sections 65.192 and 65.204 are adopted without changes and will not be republished.

The adopted change to §65.190 alters the unit number assigned to Matagorda Island Wildlife Management Area. The unit number of 1134 was assigned to the area when it was both a state park and a wildlife management area. Because the area is no longer a state park, it must be renumbered for purposes of internal reference. The new unit number is Unit 722.

The adopted amendment to §65.190, concerning Application, removes the Aquilla Wildlife Management Area from the applicability of the subchapter. The Aquilla area has been removed from the public hunting program by the U.S. Army Corps of Engineers, which owns the area. The adopted amendment also acknowledges the change in status of Matagorda Island State Park/Wildlife Management Area, which is no longer a unit of the state park system and is being operated solely as a wildlife management area. The adopted amendment is necessary to properly indicate the functional title of that property.

The adopted amendment to §65.192, concerning Powers of the Executive Director, eliminates former subsections (g) - (i). Former subsection (g) authorized the executive director to permit recreational activities on public hunting lands, compatible with sound resource management practices and public health and safety. The subsection is being eliminated in order to move its provisions to new §65.204, which comprehensively addresses recreational uses on wildlife management areas, making subsection (g) unnecessary.

Former subsection (h) authorized the executive director to waive application and permit fees for events having participation restricted to youth or disabled persons, or for activities conducted for purposes of research, education, or charity. The subsection has been eliminated because there are no application or permit fees for events or activities other than hunting. The only fees currently charged at wildlife management areas are those associated with hunting, which is not regarded as a special event.

Former subsection (i) authorized the executive director to establish regulations for camping on public hunting lands, consistent with the type of public use activity authorized and the environmental protection of the area. Camping is an activity other than hunting or fishing and is thus a recreational use as defined in §65.191(34). The subsection is being eliminated for the same reasons as subsection (g).

Adopted new §65.204, concerning Recreational Activities on Wildlife Management Areas, authorizes specific recreational activities on all wildlife management areas, provided the use does not conflict with the operation or management of an area or with the utilization of an area for the purposes for which it was purchased, leased, or acquired. The adopted new section is necessary to allow the use of wildlife management areas for purposes other than hunting and fishing. Many if not most of the wildlife management areas in Texas were purchased wholly or in part through the Pittman-Robertson (PR) Federal Aid program. Under PR rules, such property can be used for any purpose not inconsistent with the reasons for which the property was approved for purchase.

The adopted amendment to §65.190 will function by removing references to areas that are no longer subject to the subchapter and by reflecting the proper classification terminology of each type of area under the control of the subchapter.

The adopted amendment to §65.192 will function by eliminating unnecessary provisions.

Adopted new §65.204 will function by authorizing specific recreational activities on all wildlife management areas.

The department received 10 comments opposing adoption of the proposed amendment to §65.192 that would remove Aquilla Wildlife Management Area from the public hunting program. Of the 10 commenters, seven articulated a specific reason for opposing adoption: all seven stated that hunting and fishing should not be discontinued on the area. The department agrees with the comments and responds that hunting and fishing will continue at the Aquilla area; however, management will be by the U.S. Army Corps of Engineers, which owns the property. The rule simply removes the property from management by the Texas Parks and Wildlife Department. No changes were made as a result of the comment. The department received three comments supporting adoption of the proposed amendment.

The department received four comments opposing the proposed amendment to eliminate §65.192(g), which authorized the executive director to permit recreational activities on public hunting lands. No commenter stated a specific reason for opposition. No changes were made as a result of the comments. The department received one comment supporting adoption of the proposed amendment.

The department received nine comments opposing adoption of the proposed amendment to delineate the specific recreational activities authorized on wildlife management areas. All nine commenters stated that wildlife management areas should not be used for any purpose other than hunting or fishing. The department disagrees with the comments and responds that the commission policy and direction is to provide the maximum amount of public hunting opportunity possible on wildlife management areas, balanced with what recreational activity can be provided; however, the primary use of wildlife management areas is as research and demonstration areas. Therefore, recreational activities are permitted when they do not interfere with either hunting activities or research and demonstration activities. No changes were made as a result of the comments. The department received three comments supporting adoption of the proposed rule.

One commenter opposed adoption of the proposed rules and stated that hunting should not be allowed at Choke Canyon State Park because there were no more deer left and the park was in bad shape. The commenter also stated that if hunting is allowed, the entire park should not be closed, just the unit where hunting is taking place. Concerning the authorization of recre-

ational activities on wildlife management areas, the commenter stated that the rule language should employ the imperative tense rather than the conditional tense in establishing the department's duties. The department disagrees with the comments and responds that public hunting on any unit of public hunting lands is offered only under when supported by the tenets of sound biological management, and would not be offered in any circumstance where to do so would endanger a healthy wildlife population or degrade habitat. Additionally, the department comments that units are closed when deemed necessary by staff for safety reasons or to provide maximum hunting opportunity during periods of historically low visitation. The department also responds that the grammatical voice used to express the intent of the commission with respect to recreational activities on wildlife management areas is irrelevant. Even if the rule were to require that recreational activities be provided, the activities would still have to take place within the ambit of allowable use under the terms of the agreements under which the areas were purchased or leased. In any event, the purpose of the rule is to articulate the department's commitment to the provision and equitable distribution of what recreational activity is possible on wildlife management areas. No changes were made as a result of the comments.

The Texas Wildlife Association commented in support of adoption of the proposed rules.

The amendments and new section are adopted under Parks and Wildlife Code, Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources, and Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to adopt rules governing recreational activities in wildlife management areas.

§65.190. Application.

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Lake McClellan Recreation Area, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter, except for the provisions of §65.199(15) of this title (relating to General Rules of Conduct).

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and recreational use is governed by state park regulations.

(e) Public hunting lands include, but are not limited to, the following:

(1) Alabama Creek WMA (Unit 904);

(2) Alazan Bayou WMA (Unit 747);

(3) Atkinson Island WMA;

(4) Bannister WMA (Unit 903);

(5) Big Lake Bottom WMA (Unit 733);

(6) Black Gap WMA (Unit 701);

(7) Caddo Lake WMA (Unit 730);

(8) Caddo National Grasslands WMA (Unit 901);

(9) Candy Abshier WMA;

(10) Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);

(11) Chaparral WMA (Unit 700);

(12) Cooper WMA (Unit 731);

(13) D.R. Wintermann WMA;

(14) Dam B WMA--includes Angelina-Neches Scientific Area (Unit 707);

(15) Designated Units of the Las Palomas WMA;

(16) Designated Units of Public Hunting Lands Under Short-Term Lease;

(17) Designated Units of the Playa Lakes WMA;

(18) Designated Units of the State Park System;

(19) Elephant Mountain WMA (Unit 725);

(20) Gene Howe WMA (Unit 755)--includes Pat Murphy Unit (Unit 706);

(21) Granger WMA (Unit 709);

(22) Guadalupe Delta WMA (Unit 729)--includes Mission Lake Unit (720), Guadalupe River Unit (723), Hynes Bay Unit (724), and San Antonio River Unit (760);

(23) Gus Engeling WMA (Unit 754);

(24) James Daughtrey WMA (Unit 713);

(25) J.D. Murphree WMA (Unit 783);

(26) Keechi Creek WMA (Unit 726);

(27) Kerr WMA (Unit 756);

(28) Lake McClellan Recreation Area (Unit 906);

(29) Lower Neches WMA (Unit 728)--includes Old River Unit and Nelda Stark Unit;

(30) Mad Island WMA (Unit 729);

(31) Mason Mountain WMA (Unit 749);

(32) Matador WMA (Unit 702);

(33) Matagorda Island WMA (Unit 722);

(34) M.O. Neasloney WMA;

(35) Moore Plantation WMA (Unit 902);

(36) Nannie Stringfellow WMA (Unit 716);

(37) North Toledo Bend WMA (Unit 615);

(38) Old Sabine Bottom WMA (Unit 732);

(39) Old Tunnel WMA;

(40) Pat Mayse WMA (Unit 705);

(41) Peach Point WMA (Unit 721);

(42) Ray Roberts WMA (Unit 501);

(43) Redhead Pond WMA;

(44) Richland Creek WMA (Unit 703);

(45) Sam Houston National Forest WMA (Unit 905);

(46) Sierra Diablo WMA (Unit 767);

(47) Somerville WMA (Unit 711);

(48) Tawakoni WMA (Unit 708);

(49) Walter Buck WMA (Unit 757);

(50) Welder Flats WMA;

(51) White Oak Creek WMA (Unit 727); and

(52) Other numbered units of public hunting lands.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 847. PROJECT RIO EMPLOYMENT ACTIVITIES AND SUPPORT SERVICES

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 847 related to Project RIO Employment Activities and Support Services *with* changes, as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3228):

Subchapter A. General Provisions, §847.2 and §847.3

Subchapter B. Project RIO Job Seeker Responsibilities, §847.11 and §847.12

Subchapter C. Project RIO Services, §847.21 and §847.22

Subchapter D. Project RIO Employment Activities, §847.31

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 847 related to Project RIO Employment Activities and Support Services *without* changes, as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3228):

Subchapter A. General Provisions, §847.1

Subchapter E. Project RIO Support Services, §847.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 847 rules changes is to:

(1) implement the direction of House Bill (HB) 2837, enacted by the 79th Texas Legislature, Regular Session (2005), concerning Project Reintegration of Offenders (Project RIO);

(2) modify language referencing specific divisions of the Texas Department of Criminal Justice (TDCJ);

(3) reflect revised funding strategies to support Project RIO service provision; and

(4) remove provisions related to Local Workforce Development Board (Board) responsibilities for the distribution of ex-offender documents.

HB 2837 directs increased data connectivity between the Texas workforce system and its Project RIO partners--TDCJ and the Texas Youth Commission (TYC). Additionally, the legislation directs the Windham School District, which is responsible for providing academic and vocational training services in TDCJ correctional institutions, to ensure that the training provided is targeted to current and emerging job opportunities in the Texas labor market.

Because of TDCJ's reorganization, the adopted rules remove references to TDCJ's specific organizational divisions and replace them with the more generic terms, TDCJ "correctional institutions" and "supervising offices."

The previous funding strategy to support Project RIO service provision relied heavily upon co-enrolling job seekers in Food Stamp Employment and Training (FSE&T) services. Currently, Texas Workforce Center and satellite office staff is encouraged to enroll Project RIO job seekers in the most appropriate employment and support services for the individual. The adopted rules reflect that co-enrollment continues to benefit Project RIO service provision; however, language regarding specific reliance on FSE&T has been deleted.

TDCJ has assumed responsibility for the distribution of employment documents (e.g., Social Security cards, birth certificates, DD214s [U.S. Department of Defense form that evidences military service and separation circumstances], driver's licenses) upon an individual's release from incarceration. Accordingly, the adopted rules delete the reference to Boards performing this function.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 847 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

General Comment on Chapter 847

Comment: One commenter stated that the rule language is too narrowly drawn to allow for complete integration of Project RIO services into the overall system of workforce service delivery. The commenter recommended that the rules allow for graduated levels of workforce services, based upon the needs and success of job seekers in securing employment. The commenter observed that many eligible ex-offenders and adjudicated youth fail to self-identify and, consequently, are not recognized as having been served by the workforce system. The commenter also

stated that the rules should ensure the Texas workforce system is recognized for the services provided to all ex-offenders and not be limited to ex-offenders who self-identify as Project RIO eligible.

Response: The Commission agrees and, based on the comment, amends the following sections: §§847.2, 847.3, 847.11, 847.12, 847.21, 847.22, and 847.31.

SUBCHAPTER A. GENERAL PROVISIONS

§847.1. Purpose

The Commission adopts the amendment of §847.1(a) by replacing references to the TDCJ "State Jail Division facility" and "Institutional Division" facility with the term TDCJ "correctional institution," both in this subsection and throughout Chapter 847.

The Commission adopts the amendment of language in §847.1(b) to specify that the memorandum of understanding is between the Agency, TDCJ, and TYC.

The Commission adopts the amendment of §847.1(c) to reflect new funding strategies to support Project RIO service provision. Specific reference to FSE&T funds is removed and replaced with a broader reference to integrating Project RIO service provision with the full range of activities and services available through the Texas workforce system.

§847.2. Definitions

The Commission adopts the amendment of §847.2(1)(A) by replacing the reference to the TDCJ "Institutional Division" with the collective reference TDCJ "correctional institution," and deleting the reference to the TDCJ "Parole Division," referring instead to "parole" supervision by TDCJ.

The Commission adopts the deletion of §847.2(1)(B), which stipulates the eligibility of State Jail releasees for Project RIO services. Adopted §847.2(1)(A) defines Project RIO job seekers as releasees from all classes of TDCJ correctional institutions. Section 847.2(1)(C) is renumbered as §847.2(1)(B).

Based on the general comment received, §847.2(2), which defines the Job Seeker Responsibility Agreement, is deleted because the Commission believes the provisions are more properly incorporated in §847.11 regarding job seeker responsibilities.

The Commission adopts the amendment of §847.2(2), which defines TDCJ, by removing references to the "Institutional, Parole, and State Jail Divisions," which are specific divisions of TDCJ.

The Commission adopts the amendment of §847.2(3), which defines TYC, by expanding the definition to include TYC's responsibilities for parole operations.

The Commission adopts the deletion of §847.2(5), which defines Food Stamp Employment and Training. The Commission has broadened its use of resources for serving ex-offenders and adjudicated youth; therefore, it is unnecessary to define specific services.

The Commission adopts new §847.2(4) to define the Windham School District, which provides prerelease educational and vocational training services to adult offenders incarcerated in TDCJ correctional institutions. This new definition is added in response to the provisions of HB 2837 and the functions Windham School District performs in preparing offenders for reentry into society.

§847.3. General Board Responsibilities

The Commission adopts the amendment of §847.3(a) by requiring that individuals referred as Project RIO job seekers also include "self-referred individuals." In addition, adopted changes to this subsection include adding adjudicated youth as part of the service population.

Based on the general comment received, the Commission adds language in subsection §847.3(a) to require that Boards determine the level of staff assistance that Project RIO job seekers need in order to obtain employment. The Commission also adds that Boards may provide graduated levels of service--beginning with Project RIO job seekers receiving core services such as self-directed job search--and increasing the intensity of service for those who need staff assistance to become employed. The Commission further adds that Boards offering graduated services must "ensure Project RIO job seekers who are unable to secure employment through core services are provided with intensive or training services to assist them in obtaining suitable employment." The Commission cautions Boards to closely examine the needs of ex-offenders. This population may have additional barriers to obtaining employment that require staff assistance, and Boards must ensure that Project RIO job seekers are not placed in core services indefinitely if there is no progress in obtaining employment.

The Commission adopts the amendment of §847.3(b) by replacing "General Equivalency Diploma" with "General Educational Development (GED) credential."

The Commission adopts the amendment of §847.3(c)(1), Parole Supervising Offices, by replacing references to "Parole Division" with "TDCJ or TYC," and replacing references to "TDCJ Parole Offices" with "supervising office."

The Commission adopts the amendment of §847.3(c)(2), TDCJ Institutional Division, by retitling the paragraph "Correctional Institutions," which provides a collective reference for TDCJ divisions. Further, the Commission adopts the incorporation of coordination with TYC correctional institutions, as this process is essentially similar to that required of TDCJ correctional institutions. The Commission also adopts the amendment of §847.3(c)(2) by removing the requirement to provide results of Project RIO services to the TDCJ Institutional Division. The Commission believes that this information is more properly provided to the supervising office as set forth in §847.3(c)(1).

The Commission adopts the deletion of §847.3(c)(3), TDCJ State Jail Division. Adopted §847.3(c)(2) includes the TDCJ State Jail Division in the collective term "correctional institutions."

Based on the general comment received, the Commission clarifies in §847.3(c)(2) that "Texas Workforce Center staff who are assisting Project RIO job seekers" must coordinate the provision of Project RIO services with TDCJ and TYC correctional institutions. If a Project RIO job seeker self-refers and Texas Workforce Center staff is unaware that the job seeker is Project RIO eligible, Texas Workforce Center staff will be unable to establish this coordination.

HB 2837 requires the coordination of educational and vocational training efforts conducted by Windham School District and prioritizes efforts to assist ex-offenders in securing employment related to their prerelease training. The Commission adopts new §847.3(c)(3), Windham School District, which states that Boards must coordinate on an ongoing and continuing basis with the Windham School District by providing labor market information

for their local workforce development area, including current and emerging jobs.

Based on the general comment received, the Commission further specifies in §847.3(c)(3) that Boards must "ensure that Texas Workforce Center staff who are assisting Project RIO job seekers" include in the Project RIO job seeker's Individual Employment Plan (IEP), if required, the education and training received during incarceration.

The Commission adopts the deletion of §847.3(c)(4) relating to coordination with TYC Offices. Adopted §847.3(c)(1) and §847.3(c)(2) set forth the coordination requirements with TYC correctional institutions and parole offices; therefore, §847.3(c)(4) is no longer necessary.

The Commission adopts new §847.3(c)(4), which requires the development of memoranda of understanding between Boards, TDCJ, TYC, and the Windham School District pursuant to Project RIO service provision. Currently, this requirement is contained in the Agency's funding instruments used to support TDCJ, TYC, and Board Project RIO services. The adopted new paragraph requires, at a minimum, that the memoranda of understanding must include referral coordination, progress reporting, and the provision of labor market information to the Windham School District.

Based on the general comment received, the Commission adds in §847.3(d) that a Board's service delivery strategies may include the provision of graduated core, intensive, and training services. The level of service, and the length of time a Project RIO job seeker receives the service, depends on the Project RIO job seeker's needs and the level of staff assistance required.

The Commission adopts the amendment of §847.3(d)(1) by removing the specific references to "WIA Adult and Youth services and Food Stamp Employment and Training (FSE&T)" services. The Commission's intent is to integrate Project RIO services with all services available through the Texas Workforce Centers.

The Commission adopts the deletion of §847.3(d)(2), which requires that Boards route employment documents, such as birth certificates and Social Security cards, secured by TDCJ and TYC during incarceration to ex-offenders. TDCJ and TYC have assumed this responsibility; therefore, it is no longer a requirement of the Boards.

Section 847.3(d)(3), stipulating establishment of a parole point of contact, is renumbered as §847.3(d)(2). The Commission adopts the replacement of the reference to "the TDCJ Parole Division and the TYC" with the collective reference "TDCJ and TYC supervising offices."

Section 847.3(d)(4), stipulating outreach of Project RIO job seekers at TDCJ and TYC facilities, is renumbered as §847.3(d)(3). The Commission adopts the replacement of the references to TDCJ "Parole Division" and TYC "facilities" with the collective reference "TDCJ and TYC supervising offices."

Section 847.3(d)(5), stipulating Board participation in TDCJ job fairs/career days, is renumbered as §847.3(d)(4). The Commission adopts the amendment of this paragraph by adding participation in TYC job fairs/career days and using the collective reference to "correctional institutions."

Section 847.3(d)(6), stipulating the use of reporting and document management systems, is renumbered as §847.3(d)(5). The Commission adopts the amendment of this paragraph to require the timely reporting of data reflecting Project RIO service provision in order to ensure that the charge of HB 2837 is addressed.

Section 847.3(d)(7) and §847.3(d)(8) are renumbered as §847.3(d)(6) and §847.3(d)(7), respectively.

Based on the general comment received, the Commission deletes the reference to the job seeker Responsibility Agreement in §847.3(e)(3) because of its deletion from this chapter. In addition, the Commission clarifies that Boards shall ensure progress toward achieving "employment," as well as any goals or objectives set forth in the IEP. The Commission believes this clarification is necessary because not all Project RIO job seekers have IEPs. However, regardless of whether a Project RIO job seeker has an IEP, Boards must ensure that Texas Workforce Center staff overseeing Project RIO job seekers monitors the job seekers' success in moving toward employment.

The Commission adopts the amendment of §847.3(f) by changing the paragraph title from "TDCJ Notice" to "TDCJ and TYC Notice," thereby including notice to TYC. Additionally, the collective term "supervising office" replaces the specific reference to "TDCJ Parole Division."

Based on the general comment received, the Commission deletes the reference to the job seeker Responsibility Agreement in §847.3(f). Boards must ensure that Texas Workforce Center staff continue to notify TDCJ or TYC when staff become aware of a Project RIO job seeker's failure to comply with any of the job seeker responsibilities set forth in §847.11 of this chapter.

Section 847.3(h) required that employment referrals regarding adjudicated youth be confidential. The Commission adopts expanding the requirement to state that all information related to the adjudicated status of a youth must be confidential and must not be disclosed to other entities or individuals.

Based on the general comment received, the Commission deletes the reference to the job seeker Responsibility Agreement. All of the provisions of the Responsibility Agreement contained are now included in §847.11 regarding job seeker responsibilities. The Commission believes it is more effective to provide Boards the flexibility to determine the most appropriate method for informing Project RIO job seekers of their responsibilities.

SUBCHAPTER B. PROJECT RIO JOB SEEKER RESPONSIBILITIES

§847.11. Job Seeker Responsibilities

Based on the general comment received, the Commission removes the requirements previously set forth in the job seeker Responsibility Agreement, such as compliance with the IEP, which are now included in §847.11. While Project RIO job seekers are no longer required to sign a job seeker Responsibility Agreement, Boards must ensure that Project RIO job seekers are aware of their participation responsibilities, and that failure to comply will be reported to TDCJ or TYC when Texas Workforce Center staff becomes aware of a failure to comply.

The Commission adopts the deletion of §847.11(1), which requires that Project RIO job seekers complete and sign an application for food stamp benefits. The adopted deletion of this requirement reflects the change in funding strategies used to support Project RIO service provision. While the referral of most Project RIO job seekers to the Texas Health and Human Services Commission (HHSC) for food stamp assistance is appro-

priate, the language in rule is no longer necessary because the funding strategies do not explicitly rely upon FSE&T resources.

Sections 847.11(3) - 847.11(8) are renumbered as §§847.11(1) - 847.11(7), respectively.

Comment: One commenter stated that the use of the term "drug-free" was too encompassing and might be construed to include non-controlled substances such as tobacco and caffeine. The commenter suggested that language such as "drug free as evidenced by drug testing" be included in the rule.

Response: The Commission disagrees and believes the term drug-free commonly refers to the absence of alcohol and illicit drug abuse, and its use in this context is appropriate. The term drug-free is not intended to imply required drug testing, but rather to require that Project RIO job seekers do not use, sell, or possess controlled substances or abuse alcohol.

§847.12. Job Seeker Failure to Comply

The Commission adopts the amendment of §847.12 by deleting the phrase "referred by TDCJ Parole Division" because not all job seekers are referred by supervising offices. Further, the Commission adopts the amendment of §847.12 by replacing the specific reference to the "TDCJ Parole Division" and including the requirement that the "TDCJ or TYC supervising office" be notified.

Based on the general comment received, the Commission further specifies that a Project RIO job seeker who fails to comply with §847.11, Job Seeker Responsibilities, including the IEP, may be determined ineligible to receive Project RIO services, and TDCJ and TYC shall be informed when Texas Workforce Center staff becomes aware of a failure to comply.

SUBCHAPTER C. PROJECT RIO SERVICES

§847.21. Job Seeker Assessment

Based on the general comment received, the Commission adds language in §847.21(a) to specify that initial and ongoing assessments must be performed if Texas Workforce Center staff is providing intensive or training services to Project RIO job seekers. In addition, the Commission modifies §847.21(b) to clarify that if a Project RIO job seeker is unable to secure employment through core services, Texas Workforce Center staff must provide a knowledge, skills, and abilities assessment to assist the Project RIO job seeker in obtaining employment.

In addition, the Commission adopts the amendment of §847.21(b)(4) by replacing the reference to parole "officer" with "office." The Commission believes that this information is more properly coordinated with the supervising office as set forth in §847.3(c)(1).

Comment: One commenter stated that the rules do not require formal assessments to be administered and that informal assessments should not be solely relied upon. The commenter further stated that assessments should be used to gauge whether appropriate referrals and services are being offered to Project RIO job seekers.

Response: The Commission disagrees and believes the rules strengthen the requirement that Project RIO service provision incorporates a comprehensive assessment of job seekers' training, work experience, and barriers to employment, leading to the development of an IEP. The assessment must carefully consider and incorporate the impact of occupational licensing standards, statutory limitations on employment, and conditions of parole to ensure that appropriate employment referrals are made. The rules do not require the use of a specific assessment product or process because the Commission believes it will negatively impact each Board's flexibility in designing and administering workforce services.

The Commission believes that assessments should be used to gauge whether appropriate referrals and services are being provided to Project RIO job seekers. The assessment process results in the identification of the necessary services and activities needed to move the job seeker into employment and should be used by Boards to evaluate whether Project RIO services are provided in the most efficient manner.

§847.22. Job Seeker Individual Employment Plan

Based on the general comment received, the Commission further specifies that IEPs shall be developed for Project RIO job seekers who are unable to secure employment through core services.

The Commission adopts the amendment of §847.22(1) by changing the reference to TDCJ or TYC "facility" to the collective reference "correctional institution."

The Commission adopts the amendment of §847.22(4) by changing the reference to TYC "facility" to the collective reference "correctional institution."

SUBCHAPTER D. PROJECT RIO EMPLOYMENT ACTIVITIES

§847.31. Employment Activities for Project RIO Job Seekers

Based on the general comment received, the Commission clarifies in §847.31(a) that Project RIO job seekers may receive graduated services. In addition, the Commission specifies in §847.31(b) that "Boards may provide self-directed or staff-assisted" job search and job readiness services.

The Commission adopts the deletion of §847.31(a)(1) because the funding strategy used to support Project RIO services has changed from an explicit reliance on FSE&T resources to one in which Project RIO job seekers have access to the full range of employment and training activities provided by the Texas workforce system; therefore, this paragraph is no longer necessary. Additionally, the Commission adopts the removal of §847.31(a)(2) and incorporates the text in §847.31(b). Sections 847.31(a)(2)(A) - 847.31(a)(2)(G) are renumbered as §§847.31(a)(1) - 847.31(a)(7).

Based on the general comment received, the Commission clarifies in §847.31(c) that if staff-assisted job search services are being provided, staff-assisted referrals shall be based on the Project RIO job seekers' skills, abilities, and conditions of release.

The Commission adopts the replacement of the term "officer" with "office" in §847.31(c)(1). The Commission also adopts the reordering of the language in §847.31(d) for better clarity.

SUBCHAPTER E. PROJECT RIO SUPPORT SERVICES

§847.41. Provision of Project RIO Support Services

The Commission adopts the amendment of §847.41(a) by specifying that post-employment needs are included as an allowable support service.

Comments were received from:

Hector Marquez, Texas Department of Criminal Justice, Parole Division

Laurie Bouillion Larrea, Dallas County Workforce Development Board, d/b/a Work Source for Dallas County

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§847.1 - 847.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Project RIO job seeker--an individual involved with the Texas criminal or juvenile justice systems that may include the following:

(A) Adults who were sentenced to a TDCJ correctional institution, and are within one year after their release from incarceration, or are currently under or within one year of completion of their term of parole supervision by TDCJ; and

(B) Adjudicated youth ages 16 through 21, seeking employment activities and support services, who were formerly confined in a TYC correctional institution.

(2) TDCJ--the Texas Department of Criminal Justice is the state agency that manages the overall operations of the state's prison, parole, and state jail systems.

(3) TYC--the Texas Youth Commission is the state's juvenile corrections agency that manages the overall operations of the state's youth correctional institutions and parole operations.

(4) Windham School District--the school district that is responsible for providing academic as well as career and technology education to eligible offenders incarcerated in TDCJ correctional institutions.

§847.3. General Board Responsibilities.

(a) Role of Boards. A Board shall ensure that Project RIO job seekers (i.e., individuals referred by TDCJ and TYC, as well as self-referred individuals) participate in employment activities and support services, as appropriate. Boards shall determine the level of staff assistance that Project RIO job seekers require to assist them in obtaining employment. Boards may provide graduated levels of workforce services, as defined in §801.28 of this title, based upon the job seekers' needs. Boards providing graduated services shall ensure Project RIO job seekers who are unable to secure employment through the provision of core services are provided with intensive or training services to assist them in obtaining suitable employment. The employment activities and support services, as defined in this chapter, should meet the needs of local employers, prepare Project RIO job seekers to compete in the labor market, and assist ex-offenders and adjudicated youth in obtaining employment.

(b) Board Planning. A Board shall develop, amend, and modify its Integrated Plan to incorporate and coordinate the design and management of the delivery of Project RIO employment activities and support services with the delivery of other workforce employment, training, and educational services identified in Texas Government Code §2308.251 et seq., Texas Government Code §2308.312 et seq., as well as other employment and training services included in the One-Stop Service Delivery Network as set forth in Chapter 801 of this title. The Commission's intent is to assist Project RIO job seekers with securing employment as quickly as possible; however, Project RIO - Youth may need basic skills training and education to secure employment. Specifically, Boards shall consider integration with WIA Youth services or other funding sources, as appropriate, for assisting Project RIO - Youth with obtaining the basic General Educational Development (GED) credential or basic skills training.

(c) Board Coordination. The Boards shall coordinate with the following entities to ensure the transition to employment of Project RIO job seekers:

(1) Parole Supervising Offices. A Board shall coordinate the provision of Project RIO employment activities and support services with the referring TDCJ or TYC supervising office. This coordination shall ensure that the supervising office is made aware of the results of the initial referral for Project RIO services, as well as periodic updates on program participation status as determined appropriate for the individual.

(2) Correctional Institutions. A Board shall ensure that Texas Workforce Center staff who are assisting Project RIO job seekers coordinate the provision of Project RIO employment activities and support services with TDCJ and TYC correctional institutions by utilizing the data and resources developed prior to the offender's or adjudicated youth's release. This coordination shall ensure that post-release Project RIO activities and services build upon and complement the services provided in the correctional institutions.

(3) Windham School District. Boards shall coordinate on an ongoing and continuing basis with Windham School District by providing labor market information related to their local workforce development area (workforce area), including current and emerging jobs, in order that Windham School District may better meet the needs of Texas employers through education and training services. Additionally, Boards shall ensure that Texas Workforce Center staff who are assisting Project RIO job seekers fully incorporate in Project RIO job seekers' Individual Employment Plans (IEPs), as set forth in §847.22 of this chapter, the education and training received during incarceration in order to maximize employment referrals that are directly related to that education and training.

(4) Memoranda of Understanding. Pursuant to coordination efforts, Boards shall develop memoranda of understanding with TDCJ, TYC, and the Windham School District establishing the systems, structures, and processes for the provision of Project RIO services. The memoranda of understanding must include, but are not limited to, procedures for the following activities:

(A) Referral coordination for parolees or adjudicated youth;

(B) Progress reporting related to job seeker status and services received; and

(C) The provision of labor market information to the Windham School District.

(5) Other Partners. For the purposes of ensuring that Project RIO job seekers have the necessary support services available to them to enable successful entry into the labor force, a Board shall develop cooperative agreements and service arrangements meeting the requirements of Texas Labor Code §306.007(a).

(d) Service Delivery Strategies. A Board shall develop a Project RIO Service Delivery Strategy, which may include the provision of graduated levels of workforce services, as set forth in §801.28

of this title, based upon the needs of Project RIO job seekers. Boards shall provide intensive or training services, as appropriate, to Project RIO job seekers who receive core services but were unable to secure employment. Boards shall fully incorporate and ensure the following additional elements:

(1) The efficient delivery and linkage of Project RIO employment activities and support services within the workforce area's One-Stop Service Delivery Network with other employment and training services funded through the Texas Workforce Centers;

(2) A point of contact for TDCJ and TYC supervising offices to facilitate the exchange of information regarding the Project RIO job seeker's progress toward securing employment and related participation information;

(3) The outreach of Project RIO job seekers at TDCJ and TYC supervising offices;

(4) The participation of the One-Stop Service Delivery Network in job fairs/career days held in TDCJ and TYC correctional institutions;

(5) The timely and accurate reporting of data reflecting Project RIO service provision as well as the status of referrals for service;

(6) All performance standards are met, as developed by the Commission; and

(7) The performance of any other duties, as required by the Commission, necessary to implement the intent of Texas Labor Code, Chapter 306.

(e) Access to Project RIO Employment Activities and Support Services. A Board shall ensure that the oversight and monitoring of program requirements and participant activities occur on an ongoing basis, as determined appropriate by the Board, and consist of the following:

(1) tracking and reporting, as required by the Commission, of employment activities and support services, including appropriate data relating to referrals, placements, specialized on-the-job training, and completion of training, such as GED completion, college credit and noncredit course accomplishments, or other data, as applicable;

(2) determining and arranging for any referrals to support services needed to assist the Project RIO job seeker in complying with Project RIO employment activities to address barriers to employment; and

(3) ensuring progress toward achieving employment and the goals and objectives in the Project RIO job seeker's IEP, as set forth in §847.22 of this chapter.

(f) TDCJ and TYC Notice. A Board shall ensure that notification to the supervising office is made in a timely manner if Texas Workforce Center staff becomes aware of a job seeker's failure to comply with the job seeker responsibilities, as set forth in §847.11 of this chapter.

(g) Employer Notice. A Board shall ensure that employers are informed at the time of the employment referral of the Project RIO job seeker's status as an ex-offender and the availability of Work Opportunity Tax Credits and fidelity bonding services.

(h) Youth Confidentiality. All information regarding the adjudicated status of a youth shall be held in strict confidence and shall not be disclosed to any other entity or person. A Board shall ensure that employment referrals for adjudicated youth are made in accordance with the confidentiality requirements set forth in state statutes, state rules, and Commission policies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 5, 2006.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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For further information, please call: (512) 475-0829

SUBCHAPTER B. PROJECT RIO JOB SEEKER RESPONSIBILITIES

40 TAC §847.11, §847.12

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.11. Job Seeker Responsibilities.
A Board shall ensure that Texas Workforce Center staff who are assisting Project RIO job seekers make Project RIO job seekers aware of the requirement to comply with the following provisions:

(1) participate in employment activities as described in §847.31 of this chapter;

(2) comply with the IEP, as set forth in §847.22 of this chapter;

(3) attend scheduled Project RIO appointments;

(4) notify the Texas Workforce Center, or the Board's designated service provider, upon securing employment;

(5) participate in or receive support services as described in §847.22 and §847.41 of this chapter, necessary to enable the Project RIO job seekers to work or participate in employment activities, including counseling, treatment, and vocational or physical rehabilitation;

(6) be free of outstanding warrants and not in pre-revocation status; and

(7) be drug-free and comply with other terms or conditions of parole.

§847.12. Job Seeker Failure to Comply.
Project RIO job seekers who fail to meet the job seeker responsibilities, as set forth in §847.11 of this subchapter, may be deemed ineligible for Project RIO employment activities and support services, and such participation status shall be reported to the TDCJ or TYC supervising office when Texas Workforce Center staff becomes aware of a failure to comply. Failure to comply, as determined by the Texas Workforce Center, or the Board's designated service provider, includes but is not limited to:

(1) failing to report for two scheduled interviews;

(2) turning down a position of employment that is consistent with the skills possessed by the Project RIO job seeker;

(3) quitting an employment activity without cause; or

(4) being terminated from a job for misconduct.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. PROJECT RIO SERVICES

40 TAC §847.21, §847.22

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.21. Job Seeker Assessment.

(a) Boards shall ensure that Texas Workforce Center staff who are providing intensive or training services to Project RIO job seekers perform initial and ongoing assessments to determine the employability and retention needs of Project RIO job seekers.

(b) Project RIO job seekers who are unable to secure employment through core services shall receive an assessment of their knowledge, skills, and abilities as well as potential barriers to securing and retaining employment, such as:

(1) information identified in the assessments provided by agency partners, which includes background information relating to education and vocational skills training obtained while incarcerated, employment history, academic achievements, and past skills attainments;

(2) other skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(3) support services needs; and

(4) family circumstances that may affect participation, including the existence of domestic violence, substance abuse, and mental illness, or the need for parenting skills training, which, if identified, may require coordination through the parole or contracted parole office, as one of the factors considered in evaluating employability.

(c) Assessments, as set forth in subsection 847.21(b) of this section, shall result in the development of an IEP, as described in §847.22 of this subchapter.

§847.22. Job Seeker Individual Employment Plan.

Boards shall ensure that Texas Workforce Center staff develops IEPs for Project RIO job seekers who are unable to secure employment through core services, documents that Project RIO job seekers have been informed of their job seeker responsibilities, and that IEPs:

(1) incorporate information provided by the referring agency partner, including any IEPs provided while in a TDCJ or TYC correctional institution;

(2) identify and coordinate the provision of services available through the Texas Workforce Centers;

(3) are based on assessments, as described in §847.21 of this subchapter;

(4) contain any prevocational goals established for Project RIO - Youth participants while in a TYC correctional institution;

(5) contain employment goals to meet the needs of the local labor market;

(6) allow Project RIO job seekers to find and secure employment that utilizes their skills;

(7) meet the needs of employers by linking and matching the skills of Project RIO job seekers to the job-skills requirements of the employers;

(8) include strategies for addressing barriers identified in the assessment; and

(9) are signed by the Project RIO job seekers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PROJECT RIO EMPLOYMENT ACTIVITIES

40 TAC §847.31

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

§847.31. Employment Activities for Project RIO Job Seekers.

(a) Boards shall ensure that employment activities are provided for Project RIO job seekers, as determined by the Texas Workforce Center, or the Board's designated service provider, which

may include the provision of graduated services, as set forth in §801.28 of this title.

(b) Boards may provide self-directed or staff-assisted job search and job readiness services, which incorporate the following:

(1) information and referral to employment opportunities;

(2) job-skills assessment;

(3) counseling;

(4) occupational exploration, including information on local emerging and demand occupations;

(5) interviewing skills and practice interviews;

(6) assistance with applications and resumes; and

(7) guidance and motivation for development of positive work behaviors necessary for the labor market.

(c) Boards shall ensure that staff-assisted referrals to employment opportunities are based on the Project RIO job seeker's assessment, training, skills, and conditions of release. The referrals to jobs may be restricted to certain available employment based on:

(1) recommendations from the agency partners, including the applicable parole office or contracted parole office;

(2) consideration of factors that may increase the likelihood of success of the individual in retaining employment; or

(3) consideration of factors that may help reduce the likelihood of recidivism.

(d) In order to maximize the opportunities for Project RIO job seekers to secure employment, Boards shall ensure that other employment and training activities available through the One-Stop Service Delivery Network and paid for with funds other than Project RIO funds are considered and provided as deemed appropriate by the Texas Workforce Center, or the Board's designated service provider.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PROJECT RIO SUPPORT SERVICES

40 TAC §847.41

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules will affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 19; Texas Labor Code, Chapter 306; and Texas Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy Director for Workforce and UI Policy
Twas Workforce Commission
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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Department of Insurance, Division of Workers' Compensation

Rule Transfer

House Bill 7, §7.0031, 79th Legislature, 2005 (Regular Session) abolished the Texas Workers' Compensation Commission and transferred certain of its powers and duties to the Office of Injured Employee Counsel. In order to comply with that bill, the Texas Register is transferring Texas Administrative Code, Title 28, Part 2, Chapter 125, §§125.1 - 125.3 to Title 28, Part 6, Chapter 276, §§276.10 - 276.12.

The rule transfer took place March 1, 2006. Please refer to Figure: 28 TAC Chapter 276 to see the conversion chart.

Figure: 28 TAC Chapter 276

TRD-200603104

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Office of Injured Employee Counsel

Rule Transfer

House Bill 7, §7.0031, 79th Legislature, 2005 (Regular Session) abolished the Texas Workers' Compensation Commission and transferred certain of its powers and duties to the Office of Injured Employee Counsel. In order to comply with that bill, the Texas Register is transferring Texas Administrative Code, Title 28, Part 2, Chapter 125, §§125.1 - 125.3 to Title 28, Part 6, Chapter 276, §§276.10 - 276.12.

The rule transfer took place March 1, 2006. Please refer to Figure: 28 TAC Chapter 276 to see the conversion chart.

Figure: 28 TAC Chapter 276

[graphic]

Figure: 28 TAC Chapter 276

Current Rules from Title 28, Part 2 Texas Department of Insurance, Division of Workers' Compensation Chapter 125. Education and Training of Ombudsman		**Transferred to Title 28, Part 6 Office of Injured Employee Counsel Chapter 276. General Administration Subchapter B. Ombudsman Program**	
Section	**Heading**	**Section**	**Heading**
§125.1	Definitions	§276.10	Definitions
§125.2	Ombudsman Training Program/Continuing Education	§276.11	Ombudsman Training Program/Continuing Education
§125.3	Private Meetings with Unrepresented Claimants	§276.12	Private Meetings with Unrepresented Claimants

TRD-200603105

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

Notice is given that the Commissioner of Insurance will consider four endorsements proposed by the staff of the Personal and Commercial Lines Division of the Texas Department of Insurance. For an additional premium, the proposed optional endorsements provide coverage for additional living expenses resulting from mandatory evacuations or an extended loss of utilities. The purpose of these endorsements is to establish a method for insurers that opt to provide coverage to address the costs associated with these events. Currently, the costs a homeowner, tenant, or condominium unit owner incurs when a civil authority orders them to leave an area or when utilities are lost for an extended period of time are not generally covered by most residential property insurance policies. In September 2005, many consumers residing along the Texas Gulf Coast were required by civil authorities to evacuate their communities and in many cases lost their utilities due to Hurricane Rita. Due to either the ordered evacuation, the loss of utilities, or both, these consumers incurred additional living expenses, such as meals and lodging, that were necessary to maintain a normal standard of living. When a catastrophic event such as a hurricane strikes or threatens to strike an area, residents may be less inclined to evacuate their homes if this type of insurance coverage is not available. As a matter of public policy, consumers should be encouraged to escape harm's way. These endorsements will provide homeowners, tenants, and condominium unit owners with a means to obtain this additional living expenses coverage from those insurers that choose to offer the coverage.

Staff's petition (Reference No. P-0606-09-I) was filed on June 14, 2006. Article 5.96(d) provides that any interested person may request the Commissioner to hold a hearing before acting on a pending petition. Except as provided by Article 5.96A, the Commissioner has discretion on whether to hold the hearing. Any request for a public hearing should be submitted separately by 5:00 p.m. on July 24, 2006 to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. If a hearing is held, written and oral comments presented at the hearing will be considered.

The proposed endorsements are filed pursuant to Insurance Code Articles 5.13-2 and 5.96. Article 5.13-2, §8(e) provides that the Commissioner of Insurance may promulgate policy forms, endorsements, and other related forms that insurers may use, at their discretion, in lieu of the insurer's own forms in writing insurance subject to Article 5.13-2. Article 5.96 authorizes the Commissioner of Insurance to promulgate policy and endorsement forms for fire and allied lines of insurance which includes residential property insurance.

Staff proposes the following optional endorsements for use with Texas Homeowners Policy Forms A, B, and C:

A new endorsement, HO-115, entitled "Loss of Use Due to Mandatory Evacuation." The endorsement provides coverage for homeowners who incur additional living expenses when a civil authority orders a mandatory evacuation. The ordered evacuation must be in effect for a period of twenty-four consecutive hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible applies.

A new endorsement, HO-116, entitled "Loss of Use Due to Loss of Utilities." The endorsement provides coverage for homeowners who incur additional living expenses as a result of an extended loss of utilities. Utility service, as defined in the endorsement, must be unavailable for a period lasting longer than twenty-four hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible applies.

Staff proposes the following optional endorsements for use with Texas Homeowners Tenant Policy Forms B and C and Texas Homeowners Condominium Policy Forms B and C:

A new endorsement, HO-115A, entitled "Loss of Use Due to Mandatory Evacuation." The endorsement provides coverage for tenants and condominium unit owners who incur additional living expenses when a civil authority orders a mandatory evacuation. The ordered evacuation must be in effect for a period of twenty-four consecutive hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible applies.

A new endorsement, HO-116A, entitled "Loss of Use Due to Loss of Utilities." The endorsement provides coverage for tenants and condominium unit owners who incur additional living expenses as a result of an extended loss of utilities. Utility service, as defined in the endorsement, must be unavailable for a period lasting longer than twenty-four hours for coverage to apply. The endorsement imposes other coverage limitations. No deductible applies.

The staff requests that these proposed endorsements be adopted effective fifteen days after notice of adoption is published in the Texas Register.

A copy of the full text of the proposed endorsements is available for review in the Office of the Chief Clerk of the Texas Department of Insurance located at 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the proposed endorse-

ments, please contact Ms. Sylvia Gutierrez at 512-463-6327 and (refer to Reference No. P-0606-09-I).

Written comments to these proposed endorsements must be submitted no later than 5:00 p.m. on July 24, 2006 to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Marilyn Hamilton, Associate Commissioner, Personal and Commercial Lines Division, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Article 5.13-2 and Article 5.96 of the Insurance Code.

This notice is made pursuant to the Insurance Code Article 5.96 which exempts it from the requirements imposed by the Administrative Procedures Act of Government Code Chapter 2001.

TRD-200603283
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 14, 2006

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 68, Negotiation and Mediation of Certain Contract Disputes, Subchapter A, General, §§68.1, 68.3, 68.5, and 68.7; Subchapter B, Negotiation of Contract Disputes, §§68.21, 68.23, 68.25, 68.27, 68.29, 68.31, 68.33, 68.35, and 68.37; and Subchapter C, Mediation of Contract Disputes, §§68.47, 68.49, 68.51, 68.53, 68.55, 68.57, 68.59, and 68.61.

This review is in accordance with Texas Government Code, §2001.039 which requires state agencies to review and consider for readoption their administrative rules every four years.

An assessment will be made by the OAG as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the OAG.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Suzanna Rickard, Assistant Attorney General, General Counsel Division, Office of the Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 936-1676, suzanna.rickard@oag.state.tx.us. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

TRD-200603246
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 13, 2006

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 122 concerning Compensation Procedure--Claimants, Subchapter A, Claims Procedure for Injured Employees. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9 - 10, 76th Legislature, and Texas Government Code, §2001.039 as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

§122.1. Notice to Employer of Injury or Occupational Disease.

§122.2. Injured Employee's Claim for Compensation.

§122.3. Exposure to Communicable Disease: Reporting and Testing Requirements for Emergency Responders.

§122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.

§122.5. Employee's Multiple Employment Wage Statement.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 24, 2006 and submitted to Kristi Dowding, Legal and Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200603274
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 14, 2006

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 122 concerning Compensation Procedure--Claimants, Subchapter B, Claims Procedure for Beneficiaries of Injured Employees. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9 - 10, 76th Legislature, and Texas Government Code, §2001.039 as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

§122.200. Claim for Death Benefits.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 24, 2006 and submitted to Kristi Dowding, Legal and Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200603275

Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 14, 2006

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 129 concerning Income Benefits--Temporary Income Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§129.1. Definitions for Temporary Income Benefits.

§129.2. Entitlement to Temporary Income Benefits.

§129.3. Amount of Temporary Income Benefits.

§129.4. Adjustment of Temporary Income Benefit Amount.

§129.5. Work Status Reports.

§129.6. Bona Fide Offers of Employment.

§129.7. Non-Reimbursable Employer Payments.

§129.11. Agreement for Monthly Payment of Temporary Income Benefits.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 24, 2006 and submitted to Kristi Dowding, Legal and Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200603276
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: June 14, 2006

♦ ♦ ♦

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 281, concerning Administrative Practice and Procedures, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 PM, July 28, 2006.

TRD-200603222
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 13, 2006

♦ ♦ ♦

The Texas State Board of Pharmacy files this notice of intent to review Chapter 311, concerning Code of Conduct, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 PM, July 28, 2006.

TRD-200603223
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 13, 2006

♦ ♦ ♦

Adopted Rule Review

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code, Title 7, Chapter 91, §91.702 relating to records for lending transactions; §91.703 relating to interest; §91.705 relating to home improvement loans; §91.706 relating to home equity loans; §91.707 relating to reverse mortgages; §91.709 relating to member business loans; §91.716 relating to prohibited fees; and §91.717 related to more stringent restrictions. Notice of the proposed review and a request for comments was published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1737).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§91.702, 91.703, 91.705, 91.706, 91.707, 91.709, 91.716, and 91.717 continue to exist and readopts these sections without changes, pursuant to the requirements of Government Code, §2001.039.

TRD-200603203
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 12, 2006

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §33.27(h)(1)

Annual Assessment Fee Schedule:

If your total number of annual transactions is:		Then your annual assessment is:
Over --	But not over --	
----------	$249,999.99	$1,950
$250,000.00	$499,999.99	$1,950 plus the amount of your transactions over $250,000 multiplied by a factor of .002
$500,000.00	$999,999.99	$2,450 plus the amount of your transactions over $500,000 multiplied by a factor of .0015
$1,000,000.00	$9,999,999.99	$3,200 plus the amount of your transactions over $1 million multiplied by a factor of .0001
$10,000,000.00	$24,999,999.99	$4,100 plus the amount of your transactions over $10 million multiplied by a factor of .00007
$25,000,000.00	$49,999,999.99	$5,150 plus the amount of your transactions over $25 million multiplied by a factor of .00005
$50,000,000.00	$199,999,999.99	$6,400 plus the amount of your transactions over $50 million multiplied by a factor of .000009
$200,000,000.00	----------	$7,750 plus the amount of your transactions over $200 million multiplied by a factor of .000008

If the annual assessment is greater than $15,000, your annual assessment is $15,000.

Figure: 7 TAC §84.209(1)(A)

"(Optional:) DATE _____)
BUYER _____
ADDRESS _____
CITY _____ STATE_____ZIP_____
PHONE _____"

SELLER/CREDITOR_____
ADDRESS _____
CITY _____ TX ZIP _____
PHONE _____

(Optional Co-Buyer Identification)
CO-BUYER _____
ADDRESS _____
CITY _____ STATE_____ZIP_____
PHONE _____"

Figure: 7 TAC §84.209(5)

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Figure: 7 TAC §84.209(6)

"Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____"

Figure: 7 TAC §84.209(7)

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	$	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.
Late Charge: **[True daily earnings:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. **[Scheduled Installment Earnings Method or sum of the periodic balances:]** (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.
Prepayment: **[True daily earnings method:]** If I pay all that I owe early, I will not have to pay a penalty. **[Sum of the periodic balances method:]** I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.
Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

Figure: 7 TAC §84.209(8)(A)

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Other insurance paid to the insurance company $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and/or registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____ $_____
   Total other charges and amounts paid to others on my behalf $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[*Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.*]

Figure: 7 TAC §84.209(8)(B)

ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		$_____(1)
2.	Downpayment (A + B) =		
	A. [*If netting add*: (if negative, enter "0" and see Line 4.A. below)]		
	Gross trade-in	$_____	
	- payoff by seller	$_____	
	= net trade-in	$_____	
	B. [*If not netting add*: (if negative enter "0" and see Line 4.A. below)]		
	+ cash	$_____	
	+ Mfrs. Rebate	$_____	
	+ other (describe) _____	$_____	
	Total downpayment		$_____(2)
3.	Unpaid balance of cash price (1 minus 2)		$_____(3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):		
	A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____	$_____	
	B. Cost of physical damage insurance paid to insurance company	$_____	
	C. Cost of optional coverages with physical damage insurance paid to insurance company	$_____	
	D. Cost of optional credit insurance paid to insurance company or companies Life Disability	$_____	
	E. Other insurance paid to the insurance company	$_____	
	F. Official fees paid to government agencies	$_____	
	G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)]	$_____	
	H. Other taxes [*Optional addition*: (if not included in cash price)]	$_____	
	I. Government license and/or registration fees	$_____	
	J. Government certificate of title fee	$_____	
	K. Government vehicle inspection fees	$_____	
	L. Deputy service fee paid to dealer	$_____	
	M. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]**	$_____	
	N. Other charges (Seller must identify who is paid and describe purpose)		
	to_____for_____	$_____	
	to_____for_____	$_____	
	to_____for_____	$_____	
	Total Itemized Charges upon which the Finance Charge is assessed		$_____(4)
5.	Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)		$_____(5)
6.	Total Sales Tax (Upon Which No Finance Charge is Assessed)		$_____(6)
7.	**Amount Financed** (5+6)		$_____(7)
	Finance Charge (Not Assessed Upon Sales Tax)		$_____

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $5.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

Figure: 7 TAC §84.209(10)

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

Figure: 7 TAC §84.209(11)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]***

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

Figure: 7 TAC §84.209(12)

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

Figure: 7 TAC §84.209(13)

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer	$_____	☐Credit Life, both buyers	$_____	Term _____
☐Credit Disability, one buyer	$_____	☐Credit Disability, both buyers	$_____	Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

Figure: 7 TAC §84.209(15)

"Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____Buyer _____Co-Buyer"

Figure: 7 TAC §84.209(18)(B)

"

_____ _____

Buyer Date Seller Date

_____

Co-Buyer Date

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT."

Figure: 7 TAC §84.209(21)

"You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. to anything else I owe under this agreement."

Figure: 7 TAC §84.209(31)

"To secure all I owe on this contract and all my promises in it, I give you a security interest in

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle."

Figure: 7 TAC §84.209(34)(A)

"I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law."

Figure: 22 TAC §165.6(f)

DISCLOSURE AND CONSENT FORM
MEDICAL, SURGICAL, AND DIAGNOSTIC PROCEDURES

PATIENT NAME: _____ **DATE OF BIRTH:** _____ **AGE:** ____

This Form has been adopted by the Texas Medical Board in accordance with the requirements of Section 164.052(c), Texas Occupations Code and is published in 22 Texas Administrative Code, Section 165.6(f). The purpose of this Form is to allow the physician to obtain the required consents for an abortion to be performed on an unemancipated minor. This Form is available for downloading on the Texas Medical Board web site at "www.tmb.state.tx.us".

Part I. Information about Patient Consent Requirements and Parental Consent Requirements.

TO THE PATIENT: As the patient, you have the right to be given information about your health condition, our plans for your care, and the risks and hazards of the planned care. You have the right to provide written consent for the medical procedures agreed to be performed. As your physician, I am required by law to provide this information to you, and to have your consent, or permission, before we can start any medical procedure on you. This is called the "Patient Consent Requirement." Your signature at the bottom of Part IV of this Form is your consent for me to perform the medical procedures that are checked below in Part II.

TO THE PATIENT'S PARENT, LEGAL GUARDIAN, OR MANAGING CONSERVATOR: As the parent, legal guardian, or managing conservator of a child, you have the right to be given information about your child or ward's health condition, our plans for her care, and the risks and hazards of the planned care. You are also required to provide written consent, or permission, for the medical procedures agreed to be performed on your child or ward, unless otherwise stated in law. This called the "Parental Consent Requirement."

A child includes each patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order. In Texas, this is called an "unemancipated minor." I am required by law to have the written consent of either one of the patient's parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor. The Parental Consent Requirement does not apply if the unemancipated minor has a court order waiving the parental consent requirement (a "judicial bypass order")

The Parental Consent Requirement has two parts. The first part requires one of the patient's parents, legal guardian, or managing conservator to initial each page of this Form. Their initials mean that they have had the chance to read this information (or to have it read to them) and to ask questions. The initialing of each page can be done at any time and at any location. The second part requires either one of the patient's parents, legal guardian, or managing conservator to sign the Parental Consent in Part V of this Form. This Form must be signed either in the physician's office or clinic in front of a witness, or in any location in front of a person who is a notary public. The purposes of these signing requirements are to help make sure that only those persons listed on the Parental Consent in Part V of this Form are the ones who actually sign it.

Part II. Surgical and Medical Procedures.

The surgical and/or medical procedures that are planned to be performed on the patient are the ones that are checked below. As used in this Form, "abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

Surgical Abortion Procedures:

_____ Dilatation and Curettage (D&C)

_____Dilatation and Evacuation (D&E)

_____Manual Vacuum Aspiration

_____Machine Vacuum Aspiration

Medical Abortion Procedures:

_____Methotrexate

_____Misoprostol

Other as listed:

_____

_____

Part III. Risks and Hazards.

There are risks and hazards related to the surgical and medical procedures planned for the patient. The following list is not meant to scare the patient, but to give her and her parent, legal guardian, or managing conservator adequate information to be used in making their decisions to have the physician perform the particular procedures checked above.

The patient should read and initial the following blanks. Her initials mean she has read the information (or had it read to her) and agrees with the statement.

_____ I have been told by the physician or physician's assistant about the following risks and hazards that may occur in connection with any surgical, medical, and/or diagnostic procedure:

(A) Potential for infection.
(B) Blood clots in veins and lungs.
(C) Hemorrhage.
(D) Allergic reactions.
(E) Even death.

_____ I have been told by the physician or physician's assistant about the followings risks and hazards that may occur with a surgical abortion:

(A) Hemorrhage (heavy bleeding).
(B) A hole in the uterus (uterine perforation) or other damage to the uterus.
(C) Sterility.
(D) Injury to the bowel and/or bladder.
(E) A possible hysterectomy as a result of complication or injury during the procedure.
(F) Failure to remove all products of conception that may result in an additional procedure.

_____ I have been told by the physician or physician's assistant about the followings risks and hazards that may occur with a medical/non-surgical abortion:

(A) Hemorrhage (heavy bleeding).
(B) Failure to remove all products of conception that may result in an additional procedure.
(C) Sterility.
(D) Possible continuation of pregnancy.

_____ I have been told by the physician or physician's assistant about the following risks and hazards that may occur with this particular procedure:

(A) Cramping of the uterus or pelvic pain.
(B) Infection of the female organs: uterus, tubes, and ovaries.
(C) Cervical laceration, incompetent cervix.
(D) Emergency treatment for any of the above named complications.
(E) Other as written:

_____

_____

_____I have been told by the physician or physician's assistant about the following other information that is required by law to be discussed before I can give my voluntary and informed consent to an abortion: (See Sections 171.11 and 171.12, Tex. Health & Safety Code):

(1) the probable gestational age of the fetus;
(2) the medical risks associated with carrying the child to term;
(3) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
(4) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;
(5) public and private agencies provide pregnancy prevention counseling and media referrals for obtaining pregnancy medications or devices, including emergency contraception for victims of rape or incest; and
(6) the woman has the right to review the printed materials provided by the Department of State Health Services.

Part IV. Patient's Consent for Surgical or Medical Procedures.

To meet the Patient Consent Requirement, the patient must complete Part IV of this Form. An initial on each blank means that the patient has read (or had the information read to her) and agrees with the statement. The patient's signature means that she is agreeing to have the abortion procedures set out above.

Patient Consent Statement:

_____I understand that my doctor_____(print the name of your doctor) is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

_____I understand that I am not being forced to have this abortion and have the choice on whether to have this procedure.

_____I give my permission to this doctor and such other associates, technical assistants, and other health providers as the doctor thinks is needed to perform the abortion on me using the surgical and medical procedures checked above.

_____I understand that my physician may discover other or different conditions that require additional or different procedures than those planned.

_____I give my permission to my physician and such associates, technical assistants and other health care providers to perform such other procedures that are advisable in their professional judgment.

_____I ☐ **do** ☐ **do not give my permission for the use of blood** and blood products as deemed necessary.

_____I understand that my doctor cannot make any promise regarding the end results of the abortion or my care.

_____I understand that there are risks and hazards that could affect me if I have the surgical or medical procedures checked above.

_____I have been given an opportunity to ask questions about my condition, alternative forms of treatment, risk of non-treatment, the procedures to be used, and the risks and hazards involved.

_____ I understand that information about abortion that is included in the law as the Woman's Right to Know Act has been made available to me as required by Section 171.001, *et seq.*, Tex. Health & Safety Code, specifically the "Women's Right to Know Informational Brochure" and the "Women's Right to Know Resource Directory."

_____ I believe that I have sufficient information to give this informed consent.

This Form has been fully explained to me. I have read it or have had it read to me, the blank spaces have been filled in, and I believe that I understand what it says. By my signature below, I give my voluntary consent to have the surgical and medical procedures performed on me that am listed above.

_____
Printed Name of Patient

_____ _____
Signature of Patient Date

Part V. Parental Consent for Surgical or Medical Procedures.

To meet the Parental Consent Requirement, one of the parents, the legal guardian, or the managing conservator of the patient must initial each page of this Form and complete Part V of this Form. An initial on each page blank means that the parent, legal guardian, or managing conservator has had the opportunity to read the information (or to have the information read to them) and has had the opportunity to ask questions to the physician or the physician's assistant about this information. The signature of the parent, legal guardian, or managing conservator means that the person signing is agreeing to have the abortion procedures performed on the patient as set out above.

Parental Consent Statement:

_____I understand that the doctor listed above is going to perform an abortion on the patient, which will end her pregnancy and will result in the death of the fetus.

_____ I have had the opportunity to read this Form (or have it read to me) and have initialed each page.

_____I have had the opportunity to ask questions to the physician or the physician's assistant about the information in this Form and the surgical and medical procedures to be performed on the patient.

_____ I believe that I have sufficient information to give this informed consent.

By my signature below, I state and affirm that I am the patient's:

☐ Father ☐ Mother ☐ Legal Guardian ☐ Managing Conservator

By my signature below, I give permission for _____ (print the name of the patient), who is an unemancipated female, to have the surgical or medical procedure set out above.

_____
Printed Name of Parent, Legal Guardian,
or Managing Conservator

_____ _____
Signature of Parent, Legal Guardian, Date
or Managing Conservator

Part VI. Physician Declaration:

I and/or my assistant have explained the procedure and the contents of this Form to the patient and her parent, legal guardian, or managing conservator as required and have answered all questions. To the best of my knowledge, the patient and her parent, legal guardian, or managing conservator have been adequately informed and have consented to the above-described procedure.

_____ _____
Signature of Physician Date

Part VII. Authentication of Parent, Legal Guardian, or Managing Conservator.

The signature of the parent, legal guardian, or managing conservator must be authenticated. This means that the parent, legal guardian, or managing conservator must sign Part V of this Form in front of a person who is a notary public.

The signing in front of a person who is a notary public can occur at any time and at any place prior to the procedure. The signed and initialed form with the notary statement than can be brought to the physician's office or clinic by the patient.

These signing requirements do not require the parent, legal guardian, or managing conservator to be present with the patient at the time of the procedure.

To be completed by the notary public who notarizes the signing by the parent, legal guardian, or managing conservator, as provided in Part V, above:

State of Texas §
§
County of _____ §

This instrument was acknowledged before me on the _____ day of _____, A.D., 20____

by _____ (print name).

(SEAL)

_____
Notary Public, State of Texas
My commission expires: _____

Figure: 22 TAC §801.362(c)

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS AND THIS NOTICE OF (EITHER HEARING OR INFORMAL CONFERENCE) WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

Figure: 25 TAC §289.230(c)(51)

$$OD = \log_{10} \frac{I_o}{I_t}$$

where I_o = light intensity incident on the film and
I_t = light transmitted through the film.

Figure: 25 TAC §289.230(v)(5)(D)

TABLE I
X-ray Tube Voltage (kilovolt peak) and Minimum HVL

Designed Operating Range (kV)	Measured Operating Voltage (kV)	Minimum HVL (mm of aluminum)
Below 50	20	0.20
	25	0.25
	30	0.30

Figure: 25 TAC §289.230(ff)(3)

Specific Subsection	Name of Record	Time Interval for Record Keeping
(r)(1)(A)	Interpreting Physician Qualifications	Until termination of certification or 2 years after physician leaves facility
(r)(1)(C)	Interpreting Physician Continuing Education and Experience	6 years
(r)(1)(E)	Mandatory training for Interpreting Physician, if applicable	6 years
(r)(2)(A)	Medical Radiologic Technologist Qualifications	Until termination of certification or 2 years after technologist leaves facility
(r)(2)(C)	Medical Radiologic Technologist Continuing Education and Experience	6 years
(r)(2)(E)	Mandatory training for Medical Radiologic Technologist, if applicable	6 years
(r)(3)(A)	Medical Physicist Qualifications	Until physicist is no longer associated with facility
(r)(3)(C)	Medical Physicist Continuing Education and Experience	6 years
(r)(3)(E)	Mandatory training for Medical Physicist, if applicable	6 years
(s)(14)	FDA Variances	Until termination of certification or equipment is replaced
(u)(2)	Quality Assurance (QA) Records	Until the next annual inspection has been completed and the agency has determined that the facility is in compliance with the QA requirements or until the test has been performed two additional times at the required frequency, whichever is longer.
(v)(10)	Physicist Mammography Survey	7 years
(v)(11)	Physicist Mammography Equipment Evaluation	2 years
(w)(2)	Medical Outcomes Audit	2 years
§289.234(o)(2)	Complaints	3 years
(ee)(1)	Operating and Safety Procedures	Until termination of certification

(ee)(4)	Records of Receipt, Transfer, and Disposal	Until termination of certification
(ee)(6)	Protective Devices Annual Check	3 years
(ee)(7)	Records on Calibration, Maintenance and Modifications Performed on Mammography Machines	2 years
(ff)(2)(I)	Current §§289.203, 289.204, 289.205, 289.226, 289.227, 289.230, 289.234	Until termination of certification
(ff)(2)(J)	Current Certification of Mammography Systems	Until termination of certification
(ff)(2)(N)	Current Accreditation of Mammography Systems	Until termination of certification
(ff)(5)	Certification of Inspection	Until termination of certification
(gg)(6)	Notice of Failure	Until termination of certification
(gg)(10)	Patient Notification	Until termination of certification

Figure: 28 TAC §5.501(h)

[OPTIONAL PROVISION]

THIS NOTICE IS REQUIRED BY LAW. IT DOES NOT CONSTITUTE AN ADMISSION OF LIABILITY BY THE INSURANCE COMPANY.

REQUIRED NOTICE TO INSURANCE CLAIMANTS FOR MOTOR VEHICLE REPAIRS BY LAW, YOU HAVE THE RIGHT TO SELECT WHERE YOUR MOTOR VEHICLE IS REPAIRED AND THE PARTS USED FOR REPAIRS. HOWEVER, AN INSURANCE COMPANY IS NOT REQUIRED TO PAY MORE THAN A REASONABLE AMOUNT FOR SUCH REPAIRS AND PARTS. YOUR STATUTORY RIGHTS REGARDING MOTOR VEHICLE REPAIRS ARE EXPLAINED IN THE COPY OF THE INSURANCE CODE, ARTICLE 5.07-1, PRINTED ON THE REVERSE SIDE OF THIS NOTICE OR ATTACHED TO THIS NOTICE. IF THE DAMAGE TO YOUR VEHICLE IS COVERED BY AN INSURANCE POLICY, THE NATURE OF THE COVERAGE AND YOUR LEGAL RIGHTS UNDER THE CONTRACT ARE DESCRIBED IN MORE DETAIL IN THE APPLICABLE POLICY. FOR DETAILED INFORMATION REGARDING OUR INSURANCE POLICY, CONTACT: [~~IF YOU ARE INSURED BY THE COMPANY FOR THE DAMAGE, YOUR RIGHTS ARE EXPLAINED IN MORE DETAIL IN YOUR INSURANCE POLICY.~~]

NAME OF INSURANCE COMPANY:

MAILING ADDRESS:

TELEPHONE:

FAX:

E-MAIL or WEB ADDRESS:

For questions about your statutory rights regarding motor vehicle repairs under the Insurance Code, Article 5.07-1 contact the Texas Department of Insurance. You may write to the Consumer Protection Division at P.O. Box 149091, Austin, TX 78714-9091, call 1-800-252-3439, fax 1-512-475-1771, email ConsumerProtection@tdi.state.tx.us, or visit the Department online at http://www.tdi.state.tx.us.

[~~IF YOU HAVE ANY QUESTIONS ABOUT YOUR MOTOR VEHICLE REPAIR RIGHTS, CONTACT THE TEXAS DEPARTMENT OF INSURANCE AT:~~]

[~~Telephone: 1-800-252-3439~~]

[~~MAILING ADDRESS: TEXAS DEPARTMENT OF INSURANCE~~]
[~~P.O. Box 149091~~]
[~~AUSTIN TX 78714-9091~~]

[~~FAX NUMBER: 512-475-1771~~]

[~~WEB ADDRESS: http://www.tdi.state.tx.us~~]

[DISPOSICIÓN OPCIONAL]

LA LEY REQUIERE ESTE AVISO, PERO NO CONSTITUYE ADMISIÓN DE RESPONSABILIDAD CIVIL DE LA COMPAÑÍA ASEGURADORA.

AVISO OBLIGATORIO A LOS QUE PRESENTAN RECLAMACIONES PARA REPARACIÓN DE VEHÍCULO DE MOTOR.

POR LEY, USTED TIENE DERECHO A ESCOGER DONDE DESEA QUE SU VEHÍCULO SEA REPARADO Y LAS REFACCIONES QUE SE USEN EN LA REPARACIÓN. SIN EMBARGO, LA COMPAÑÍA ASEGURADORA NO ESTÁ OBLIGADA A PAGAR MÁS DE LA CANTIDAD RAZONABLE POR LAS REPARACIONES Y REFACCIONES. SUS DERECHOS POR ESTATUTO CONCERNIENTES A LAS REPARACIONES DE VEHÍCULO DE MOTOR ESTÁN DESCRITOS EN LA COPIA DEL CÓDIGO DE SEGUROS, ARTÍCULO 5.07.1, IMPRESO AL REVERSO DE ESTE AVISO O ADJUNTO A ESTE AVISO. SI LOS DAÑOS A SU VEHÍCULO ESTÁN CUBIERTOS BAJO UNA PÓLIZA DE SEGURO, LA NATURALEZA DE LA COBERTURA Y SUS DERECHOS LEGALES BAJO EL CONTRATO ESTÁN DESCRITOS EN MÁS DETALLE EN LA PÓLIZA RESPECTIVA. PARA INFORMACIÓN MÁS DETALLADA REFERENTE A NUESTRA PÓLIZA DE SEGURO, COMUNÍQUESE CON:

NOMBRE DE LA COMPAÑÍA ASEGURADORA:

DIRECCIÓN DE CORREOS:

TELÉFONO:

FAX:

DIRECCIÓN DE E-MAIL O INTERNET:

Para preguntas sobre sus derechos por estatuto respecto a las reparaciones de vehículo de motor bajo el Código de Seguros, Artículo 5.07-1 comuníquese con el Departamento de Seguros de Texas (Texas Department of Insurance o TDI). Puede escribir a Consumer Protection Division al P.O. Box 149091, Austin, TX 78714-9091, llamar al 1-800-252-3439, enviar Fax al 1-512-475-1771, e-mail a ConsumerProtection@tdi.state.tx.us o visitar el sitio electrónico de TDI por internet al http://www.tdi.state.tx.us.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Qualifications: Intellectual Property and Copyright/Trademark Counsel

The Texas Department of Agriculture (the Department), an agency of the state of Texas, is publishing this Request for Qualifications (RFQ) seeking to employ an Intellectual Property and Copyright/Trademark Counsel to assist the Department with legal services in the intellectual property and copyright/trademark areas of law in the implementation of programs under Title III of the Texas Agriculture Code.

The Department was granted by the Texas Legislature the authority in Title III of the Texas Agriculture Code to promote various products and commodities associated with Texas enterprises through marketing programs that include the use of copyrighted material and registered trademarks owned by the state of Texas. The Department is also authorized to establish programs to promote economic development in rural Texas and has also utilized registered trademarks for those programs.

The Department may implement design marks which are registered trademarks, as well as other copyrighted material, in the implementation of product promotion programs such as: the GO TEXAN Partner Program, the Texas Oyster Program, the Texas Shrimp Marketing Assistance Program, TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, Texas Wine Marketing Assistance Program, and its Food and Nutrition Program and other programs pertaining to the promotion of healthy foods. In addition, the Department may implement registered trademarks for its rural economic development programs.

Statement of Duties for the Counsel.

The counsel's responsibilities for intellectual and copyright/trademark work will include, but will not be limited to, securing state and federal trademark/certification registrations, advising the Department on protection of property rights while registrations are pending, and advising or assisting with any matter directly related to securing registration and protection of the Department's interests in the property.

With respect to intellectual property and copyright/trademark issues, counsel, in consultation with the staff of the Department, will prepare all legal documents required by the U.S. Patent and Trademark Office, the Texas Secretary of State's Office, Comptroller of Public Accounts, Attorney General, or outside parties; protect Department interests in such property and obtain registrations and certifications from the appropriate authorities; and review actions and render opinions on the legality of pending, existing or proposed copyrighted material/trademark.

The counsel shall also perform other legal services, if requested by the Department, that do not come within the functions of registration or certification of copyrighted material or trademark, but are needed for the implementation and administration of such copyrighted material and trademarks within the context of the Department's promotional, nutrition and rural economic development programs. Such services shall include, without limitation, the following: consultation concerning planning and development of copyrighted material and design marks for programs of the Department; review of design mark applications and registrations; advice and services concerning legislation affecting such programs; and advising on, and upon request of the Department potential claims against other parties by the Department in relation to copyrighted material and trademarks programs.

Proposal Contents.

Responses to this RFQ should include, at least, the following: a thorough description of your firm's ability to represent the Department in the stated job duties; a description of your firm's past experience as intellectual property and copyright/trademark counsel for other state agencies; a description of your firm's past experience as counsel to U.S. Patent and Trademark Office, the Texas Secretary of State's Office, and other similar agencies in other states; a designation of the individuals who might be assigned to the work of the Department; examples of similar programs in which your firm has assisted as legal counsel; a quotation of your proposed fee structure based upon the certification and registration of trademarks and counsel of clients; a statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in your firm; affirmation that the firm does not, and shall not during the term of the contract, represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies; and a statement of willingness to comply with policies, directives, and guidelines of the Department and the Attorney General of the State of Texas.

Statement of Evaluation Process.

Responses to this RFQ will be evaluated and ranked according to the information provided, and summarized for the Commissioner of Agriculture's review. Staff will rank the proposals and make a recommendation to the Commissioner. The Department intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at a fair and reasonable price.

Proposal Requirements.

A duly authorized representative of the firm must execute the submitted response. An unsigned response will not be accepted. Issuance of this RFQ in no way constitutes a commitment by the Department to award a contract, or to pay for any services incurred either in the preparation of a response to this RFQ or for the production of any contract for services. All communications with the Department concerning this RFQ and the selection of counsel should be directed to Ashley Harden, Acting General Counsel, on behalf of the Department. **Any contact by a submitting firm, its employees or representatives, with any staff member of the Department for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.**

Proposal Submission.

All proposals must be received no later than 5:00 p.m., August 1, 2006. Proposal responses, modifications or addenda to an original response received by the Department after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Department before the proposed due date. Firms should **submit one unbound original and three (3) copies of their proposal to:** Ashley Harden, Acting General Counsel, Texas Depart-

ment of Agriculture , P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 11th Floor, Austin, Texas 78701.

Please mark the envelopes containing proposals with the following note in the lower left-hand corner: **IN RESPONSE TO PROPOSAL REQUEST: INTELLECTUAL PROPERTY AND COPYRIGHT/TRADEMARK COUNSEL.** All proposals become the property of the Department. Proposals must set forth full, accurate and complete information as required by this request. Oral responses, instructions or offers will not be considered. The Department reserves the right to reject any and all responses.

Term of the Agreement.

The contract term shall be for the period beginning September 1, 2006, through August 31, 2007.

Terms of the Agreement.

The contract issued under this RFQ will be in the form prescribed by the Office of the Attorney General for Outside Counsel Contracts.

Proposal Modification.

Any response may be modified or withdrawn even after received by the Department at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of staff of the Department. The Department reserves the exclusive right to review proposals and make an appropriate selection from such proposals. The Department is not bound to accept any proposal by virtue of this RFQ.

Cost Incurred in Responding.

All costs directly or indirectly related to preparation of a response to the RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required by the Department shall be the sole responsibility of, and shall be borne by your firm.

Release of Information and Open Records.

All proposals shall be deemed, once submitted, to be the property of the Department. Information submitted in response to this RFQ shall not be released by the Department during the proposal evaluation process or prior to the awarding of a contract. After the Department completes the process and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Texas Public Information Act.

TRD-200603258
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: June 14, 2006

♦ ♦ ♦

Ark-Tex Council of Governments

Request for Qualifications for Environmental Assessments

PROJECT: U.S. EPA Brownfield Hazardous Assessment Grant

ISSUER: ARK-TEX COUNCIL OF GOVERNMENTS (ATCOG)

PROJECT CONTACT: Elizabeth Layman, Environmental Resource Planner

SUBMITTAL DEADLINE: 5:00 P.M. June 26, 2006.

The Ark-Tex Council of Governments (ATCOG) expects that the selected contractor will:

Prepare and maintain schedules and budgets for assessment activities

Conduct and oversee site assessments and prepare technical reports including:

Review of historical records and due diligence

Onsite sample collection and analysis

Evaluation of cleanup options and costs

Quality Assurance Project Plan in compliance with US EPA Regulations

Phase I and Phase II environmental site assessment and reports

Provide status and financial information

Attend meetings of ATCOG advisory committees

Prepare presentations regarding project progress

Develop a budget which includes plans for cleanup and reuse

The ATCOG consultant selection process will include:

Soliciting Requests for Qualifications

Reviewing qualifications and selecting consultants to present Oral Presentations 45 minutes in length.

Negotiating a contract with a selected consultant to begin work immediately

SUBMIT ELEVEN (11) COPIES TO:

Elizabeth Layman, Environmental Resource Planner

ARK-TEX COUNCIL OF GOVERNMENTS

P.O. Box 5307

Texarkana, TX 75505-5307

No electronically transmitted proposals will be accepted.

TRD-200603100
L.D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: June 8, 2006

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***Harris County, Texas and The State of Texas v. The Lubrizol Corporation,*** **Cause No. 2006-07009, in the 215th Judicial District Court, Harris County, Texas.**

Nature of Defendant's Operations: Defendant, the Lubrizol Corp., owns and operates a chemical plant specializing in the production of lubricant additives in Deer Park, Harris County, Texas. Harris

County's petition alleges that during February and July of 2005, Defendants emitted into the atmosphere a highly reactive volatile organic compound from their site and illegally discharged industrial and/or other waste into Patrick Bayou in violation of regulations issued by the Texas Commission on Environmental Quality. These air emissions and waste discharges were unauthorized and were in violation of the Texas Clean Air Act, the Texas Health & Safety Code §§382.085(a) and (b), 30 Texas Admin. Code §§116.115(b)(2)(G) and (c), Air Quality Permit No. 22046, Special Conditions 1 and 2, and the Texas Water Code §26.121.

Proposed Agreed Judgment: The proposed agreed judgment contains civil penalties and attorney's fees. In the proposed settlement, Defendants agree to pay a civil penalty of $12,000 to be divided evenly between Harris County and the State. The proposed judgment awards attorney's fees of $2,000 to Harris County and $1,000 to the State. Defendants are jointly and severally liable for monetary awards in the judgment.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Laura E. Miles-Valdez, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200603163
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 12, 2006

♦ ♦ ♦

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***Harris County, Texas and The State of Texas v. Gulf Bayport Chemicals, L.P.*, Cause No. 2006-19028, in the 152nd Judicial District Court, Harris County, Texas.**

Nature of Defendant's Operations: Defendant, Gulf Bayport Chemicals, L.P., owns and operates the chemical plant located at 9700 Bayport Blvd., Pasadena, Harris County, Texas. Harris County's petition alleges that on September 24, 2005, the defendant Gulf Bayport, L.P., illegally discharged glycerin/soybean oil into the water of the State, specifically into Harris County Flood Control ditch A104-04-00 and Taylor Bayou, in violation of Texas Water Code §26.121. This discharge was unauthorized and was in violation of Texas Water Code §26.121.

Proposed Agreed Judgment: The proposed agreed judgment contains civil penalties and attorney's fees. In the proposed settlement, Defendants agree to pay a civil penalty of $8,000 to be divided evenly between Harris County and the State. The proposed judgment awards attorney's fees of $1,000 to Harris County and $1,000 to the State. Defendant is liable for monetary awards in the judgment.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Laura E. Miles-Valdez, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200603178
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 12, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 2, 2006, through June 8, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 14, 2006. The public comment period for these projects will close at 5:00 p.m. on July 13, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Galveston County Municipal Utility District No. 12; Location: The project is located within the subdivisions of Omega Bay and Bayou Vista, off Highland Bayou, located northwest of the Highway 6 and I-45 intersection, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 311765; Northing: 3245703. Project Description: This permit application was initially coordinated via a public notice, dated 30 December 2005, under Permit Application No. 24013. The original permit application included dredging and ecosystem restoration within the Bayou Vista Channels and Omega Bay Channels. The applicant, with concurrence from the City of Bayou Vista, has requested the permit application be split into two separate applications. This permit application, No. 24216, will reflect the request for dredging and ecosystem restoration within the Omega Bay Channels. The dredging and ecosystem restoration of the City of Bayou Vista Channels will be processed under Corps Permit Application No. 24013. The City of Bayou Vista Channel dredging and ecosystem restoration will be publicly coordinated under a separate public notice. The impacts associated with

this project have not increased since the public notice dated December 30, 2005. The applicant proposes to perform maintenance hydraulic dredging within the existing canals in the Omega Bay Subdivision to maintain recreational navigation. Approximately 25,000 cubic yards of material will be dredged from Omega Bay. The canals will be dredged to a maximum depth of 8 feet below mean lower low water. The canals vary from 75 to 100 feet wide. The surface area of the canals to be dredged would be 4.5 acres. The dredge material will be utilized to restore up to 8 acres of emergent saline marsh. To address the concerns raised during the initial public notice, the applicant has moved the majority of the ecosystem restoration area to along the I-45 frontage road. The marsh restoration area will be located west and north of Omega Bay, adjacent to and within the existing marsh restoration area associated with Corps Permit No. 22473(01), and will be called the Omega Bay Mitigation Area. CCC Project No.: 06-0303-F1; Type of Application: U.S.A.C.E. permit application #24216 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Galveston County Municipal Utility District No. 12; Location: The project is located within the subdivision of Bayou Vista, off Highland Bayou, located northwest of the Highway 6 and I-45 intersection, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 311765; Northing: 3245703. Project Description: This permit application was initially coordinated via a public notice dated 30 December 2005. The original permit application included dredging and ecosystem restoration within the Bayou Vista Channels and Omega Bay Channels. The applicant, with concurrence from the City of Bayou Vista, has requested the permit application be split into two separate applications. This permit application, No. 24013, will reflect the request for dredging and ecosystem restoration within the City of Bayou Vista Channels. The dredging and ecosystem restoration of the Omega Bay Channels is now being processed under Permit Application No. 24216, which is being coordinated under a separate public notice. The impacts associated with this project have not increased since the original public notice. The applicant proposes to perform maintenance hydraulic dredging, for 10 years, within the existing canals in the Bayou Vista subdivisions to maintain recreational navigation. Approximately 35,000 cubic yards of material will be dredged from the Bayou Vista canals. The canals will be dredged to a maximum depth of 8 feet below mean lower low water. The canals vary from 75 to 100 feet wide. The surface area of the canals to be dredged would be 14 acres. The dredge material will be utilized to restore up to 8 acres of emergent saline marsh. The marsh restoration area would be located south of Bayou Vista, within the Saconas marsh, and will be called the Bayou Vista Mitigation Area. CCC Project No.: 06-0304-F1; Type of Application: U.S.A.C.E. permit application #24013 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200603245
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: June 13, 2006

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective July 1, 2006

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective July 1, 2006 in the cities listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Hudson (Angelina Co)	2003052	.020000	.082500
Pampa (Gray Co)	2090010	.020000	.082500

TRD-200603272
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: June 14, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/19/06 - 06/25/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/19/06 - 06/25/06 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200603264
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 14, 2006

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding YJK Inc. dba Granger Food Store, Docket No. 2003-0257-PST-E on June 5, 2006 assessing $4,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Lakhani Investments, Inc. dba Alamo Food Mart, Docket No. 2003-1070-PST-E on June 5, 2006 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve Henricus Byl dba Dutch Cowboy Dairy, Docket No. 2002-1299-AGR-E on June 5, 2006 assessing $3,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shawn & Shawn, Inc., Docket No. 2003-0897-PST-E on June 5, 2006 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mirage Stop, Inc., Docket No. 2003-1443-MWD-E on June 5, 2006 assessing $10,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2003-1470-AIR-E on June 5, 2006 assessing $80,444 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding JNS & Samir Corporation, Docket No. 2004-0241-PST-E on June 5, 2006 assessing $14,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCulloch County, Docket No. 2004-0827-MLM-E on June 5, 2006 assessing $31,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Aarish Investments, Inc., Docket No. 2004-1235-PST-E on June 5, 2006 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeffy's, Inc., Docket No. 2004-1253-PST-E on June 5, 2006 assessing $4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Feroz Ali Jivani dba MC Food Store 2, Docket No. 2004-1666-PST-E on June 5, 2006 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lanxess Corporation, Docket No. 2005-0006-AIR-E on June 5, 2006 assessing $17,955 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2005-0224-AIR-E on June 5, 2006 assessing $336,556 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2005-0585-AIR-E on June 5, 2006 assessing $6,860 in administrative penalties with $1,372 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Harvey Gillespe, Docket No. 2005-0628-MSW-E on June 5, 2006 assessing $7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gary Don Stahlheber dba Oak Hollow Mobile Home Park, Docket No. 2005-0655-PWS-E on June 5, 2006 assessing $1,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Teague, Docket No. 2005-0673-MWD-E on June 5, 2006 assessing $10,080 in administrative penalties with $2,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rose T. Wong and Mitchel Wong, Docket No. 2005-0785-EAQ-E on June 5, 2006 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2005-0922-PST-E on June 5, 2006 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Special Camps For Special Kids, Docket No. 2005-0969-MWD-E on June 5, 2006 assessing $6,680 in administrative penalties with $1,336 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2005-1061-IWD-E on June 5, 2006 assessing $91,502 in administrative penalties with $18,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Floresville, Docket No. 2005-1066-MWD-E on June 5, 2006 assessing $12,120 in administrative penalties with $2,424 deferred.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A B C Concrete, Inc., Docket No. 2005-1071-WQ-E on June 5, 2006 assessing $5,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Curtis Shupak dba Village WSC, Docket No. 2005-1120-PWS-E on June 5, 2006 assessing $2,010 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Houston Fruitland Inc., Docket No. 2005-1169-PWS-E on June 5, 2006 assessing $3,083 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2005-1254-IWD-E on June 5, 2006 assessing $14,100 in administrative penalties with $2,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Firoz A. Kurjee dba Wee Mart, Docket No. 2005-1346-PWS-E on June 5, 2006 assessing $1,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Dewitt dba 45 Kwik Stop, Docket No. 2005-1377-PST-E on June 5, 2006 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Public Safety, Docket No. 2005-1465-PST-E on June 5, 2006 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & K Enterprises, Inc. dba Country Food Store, Docket No. 2005-1484-PST-E on June 5, 2006 assessing $4,040 in administrative penalties with $808 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Fuels, Inc. dba Plaza Self Serve 150322, Docket No. 2005-1547-PST-E on June 5, 2006 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2005-1554-AIR-E on June 5, 2006 assessing $53,400 in administrative penalties with $10,680 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. D. Abrams, L.P., Docket No. 2005-1561-PST-E on June 5, 2006 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wafia Hanif dba Super Stop Texaco, Docket No. 2005-1573-PST-E on June 5, 2006 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sabine Cogen LP, Docket No. 2005-1658-AIR-E on June 5, 2006 assessing $11,040 in administrative penalties with $2,208 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. E. Butt Grocery Company, Docket No. 2005-1688-AIR-E on June 5, 2006 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulamali Bharwani dba Texfra, Docket No. 2005-1716-PST-E on June 5, 2006 assessing $1,900 in administrative penalties with $380 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Timberlane Estates Property Owners Association, Inc., Docket No. 2005-1717-PWS-E on June 5, 2006 assessing $1,040 in administrative penalties with $208 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Daugherty dba John Daugherty Homes, Docket No. 2005-1756-WQ-E on June 5, 2006 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-1769-AIR-E on June 5, 2006 assessing $31,875 in administrative penalties with $6,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Oilwell Varco, L.P., Docket No. 2005-1770-AIR-E on June 5, 2006 assessing $23,000 in administrative penalties with $4,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2005-1774-AIR-E on June 5, 2006 assessing $4,550 in administrative penalties with $910 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-1792-AIR-E on June 5, 2006 assessing $6,675 in administrative penalties with $1,335 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines East Texas L.P., Docket No. 2005-1809-AIR-E on June 5, 2006 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Centauri Technologies, L.P., Docket No. 2005-1817-IHW-E on June 5, 2006 assessing $25,949 in administrative penalties with $5,190 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buda/Kyle Church of Christ, Docket No. 2005-1841-PWS-E on June 5, 2006 assessing $3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Public Safety, Docket No. 2005-1847-PST-E on June 5, 2006 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports, Inc., Docket No. 2005-1851-PST-E on June 5, 2006 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Criminal Justice, Docket No. 2005-1896-MWD-E on June 5, 2006 assessing $13,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulbrandsen Technologies Inc., Docket No. 2005-1927-IWD-E on June 5, 2006 assessing $9,900 in administrative penalties with $1,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jon-Lin Corp., Docket No. 2005-1947-MLM-E on June 5, 2006 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hope Agri Products of Texas, Ltd., Docket No. 2005-1979-AIR-E on June 5, 2006 assessing $16,000 in administrative penalties with $3,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Robert Lee, Docket No. 2005-1988-MSW-E on June 5, 2006 assessing $4,950 in administrative penalties with $990 deferred.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control & Improvement District 1, Docket No. 2005-2002-PWS-E on June 5, 2006 assessing $2,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-2670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding We Are Crazy, Inc. dba Country Pantry 10, Docket No. 2005-2019-PST-E on June 5, 2006 assessing $2,675 in administrative penalties with $535 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regent Coach Line, Ltd., Docket No. 2005-2036-MLM-E on June 5, 2006 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick Tube, L.P., Docket No. 2005-2049-AIR-E on June 5, 2006 assessing $5,075 in administrative penalties with $1,015 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Railcar Services, L.P., Docket No. 2005-2059-AIR-E on June 5, 2006 assessing $9,450 in administrative penalties with $1,890 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Freight Lines, Inc., Docket No. 2005-2060-MSW-E on June 5, 2006 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining LP, Docket No. 2005-2073-AIR-E on June 5, 2006 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KBC Services, Inc. dba Marina Bay Harbor Yacht Club, Docket No. 2005-2076-PST-E on June 5, 2006 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2006-0028-AIR-E on June 5, 2006 assessing $4,264 in administrative penalties with $853 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Continental Carbon Company, Docket No. 2006-0039-AIR-E on June 5, 2006 assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monument Inn, Inc., Docket No. 2006-0058-MWD-E on June 5, 2006 assessing $6,450 in administrative penalties with $1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H.R.N. Inc. dba Collins Food Mart, Docket No. 2006-0059-PST-E on June 5, 2006 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating L.P., Docket No. 2006-0100-AIR-E on June 5, 2006 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hueco Quarry, Inc., Docket No. 2006-0109-AIR-E on June 5, 2006 assessing $1,020 in administrative penalties with $204 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trany Inc. dba MS Express 722, Docket No. 2006-0116-PST-E on June 5, 2006 assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beacon Estates Water Supply Corporation, Docket No. 2006-0129-PWS-E on June 5, 2006 assessing $2,340 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A Filed Citation was entered regarding Tina Lee, Docket No. 2006-0344-PST-E on May 31, 2006 assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mehdi Maredia dba AA & RL Kountry Store, Docket No. 2005-1578-PST-E on June 5, 2006 assessing $4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200603268

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2006

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Notice of Availability and Request for Comments on a Proposed Draft Amended Natural Resource Damages Restoration Plan

AGENCIES: Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas General Land Office, and United States Fish and Wildlife Service of the Department of the Interior (collectively the Natural Resource Trustees).

ACTION: Notice of Availability of a proposed Draft Amended Restoration Plan and Environmental Assessment for injuries to natural resources from releases of hazardous substances at the Koppers Texarkana National Priority List site and a 30-day period for public comment on this document beginning June 23, 2006.

SUMMARY: Notice is hereby given that a proposed Draft Amended Restoration Plan and Environmental Assessment (Amended Plan), to be used in the resolution of the Natural Resource Trustees' claim for natural resource damages at the Koppers Texarkana National Priority List site (the Site), is available for public review and comment. The Trustees have developed an Amended Plan to address unforeseen events which have made it impossible to implement the preferred restoration alternative originally selected. This document has been prepared by the Natural Resource Trustees in cooperation with Beazer East, Inc. (Beazer) to address injuries or potential injuries to natural resources and the services they provide as a result of releases of hazardous substances at or from the former Koppers Texarkana Wood Preserving Facility in Texarkana, Bowie County, Texas. The Amended Plan describes revisions to the originally approved Restoration Plan and Environmental Assessment (Draft Plan), which was released for public comment on October 18, 2002. The Draft Plan described potential injuries related to the Site and presented a preferred restoration alternative. The previously proposed restoration project would have provided compensation through the preservation of at least 56.5 acres of riparian and wetland habitat along Howard Creek, in Texarkana, Bowie County, Texas. The Trustees and Beazer have since determined that the property is no longer viable as a restoration alternative.

The Trustees and Beazer have concluded a search for alternative restoration projects. The search evaluated a range of projects within the Days Creek watershed in and around Texarkana, Texas and found no suitable or available properties in the area. The Trustees and Beazer then began a regional search for suitable restoration properties that met the criteria presented in the previously approved Draft Plan and that had identified title and conservation easement holders. After completing this search, the nearest suitable property was located within the Nature Conservancy's Lennox Woods Preserve in Red River County. This project would preserve a minimum of 76 acres of bottomland woodland and wetland habitats in perpetuity through a conservation easement held by the Natural Area Preservation Association, and the fee title of the property being held by the Nature Conservancy of Texas. The Trustees and Beazer are therefore presenting the Lennox Woods Preserve project as the amended preferred restoration alternative for the compensation of natural resource injuries at the former Koppers Texarkana Wood Preserving Facility in Texarkana, Bowie County, Texas.

The opportunity for public review and comment on the proposed Amended Plan announced in this notice is required under Comprehensive Environmental Response, Compensation and Liability Act of

1980. To receive a copy of the proposed Amended Plan, interested members of the public are invited to contact: Charles Brigance, Texas Commission on Environmental Quality, Remediation Division MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2238 or *cbriganc@tceq.state.tx.us*.

The Amended Plan may also be reviewed on the Texas Commission on Environmental Quality Natural Resource Trustee Program Web site at: *www.tceq.state.tx.us/remediation/nrtp/index.html*.

DATES: Comments must be submitted in writing on or before 5:00 p.m. on July 24, 2006, to Charles Brigance of the Texas Commission on Environmental Quality at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments prior to finalizing the proposed Amended Plan.

SUPPLEMENTARY INFORMATION: The Site is a former wood treatment facility that began operation in 1910. It is located approximately one mile west of downtown Texarkana, Bowie County, Texas. Waggoner Creek is located immediately adjacent to the Site and forms its western boundary.

On April 16, 1984, The Texas Department of Water Resources (now the Texas Commission on Environmental Quality) recommended to the Environmental Protection Agency (EPA) that the site be placed on the National Priorities List (NPL). The EPA concurred and the Site was proposed for placement on the NPL on October 15, 1984. The site was subsequently added to the NPL on June 10, 1986.

The Natural Resource Trustees determined that a natural resource damage assessment was appropriate due to potential injuries to aquatic and biological natural resources, as a result of surface water runoff and groundwater discharges into Waggoner Creek and an on-site pond. A cooperative assessment of injuries or potential injuries to natural resources was jointly performed by the Natural Resource Trustees and Beazer.

The cooperative assessment determined that the release of hazardous materials at or from the Site resulted in injury or potential injury to natural resources. The Draft Plan described the compensatory restoration project initially proposed to compensate the public for lost ecological services identified in the cooperative damage assessment. Details of the injury assessment and the review of potential restoration options were outlined in the Draft Plan. The Draft Plan was released for public review on October 18, 2002. The document described the assessment procedures used to define the natural resource services losses and to scale the restoration action. It also identified a preservation property preferred to compensate for those service losses caused by the natural resource injuries at the Site. The Trustees did not receive public comment concerning the Draft Plan.

The originally approved preservation property was located south of the City of Texarkana in Bowie County, Texas. The property was a 56.5-acre parcel located on Howard Creek, approximately 1.8 miles south of the Koppers Texarkana Site. The property was bordered by residential development to the north, west and southeast, and undeveloped woodlands along most of the south and east. The property contained extensive wetlands, ponds and riparian hardwood forests, as well as upland pine forests. The habitat supported numerous species of bird, mammals, reptiles, and amphibians.

The property and habitat were to have been preserved in perpetuity through the transfer to a public or private entity and/or use of appropriate conservation easements, deed restrictions, or other legal instruments to ensure the ecological integrity of the site. Numerous public and private organizations were contacted and presented the opportunity to either hold fee title or easement rights on the Howard Creek Preservation property. However, with increasing development in the area and the completion of the new Highway 59 corridor near the restoration project, many of the entities viewed the property as a potential liability and felt that preserving the ecological integrity of the site would be extremely difficult. After two years of attempts to work through these issues and with continued development in the area it became obvious that the property would not attract a fee title or easement holder. The Trustees and Beazer have since determined that the property is no longer viable as a restoration alternative.

The Trustees have identified an alternate preferred restoration alternative that would compensate for potential injuries to water quality and aquatic habitats through the preservation of a 76-acre parcel of bottomland hardwood habitat and aquatic resources located along Pecan Bayou within the Nature Conservancy of Texas' Lennox Woods Preserve, in Red River County, Texas. The parcel has a substantial aquatic habitat component. The property is located within an area that represents high quality old-growth bottomland hardwood forest and contains extensive wetlands, backwaters, and riparian hardwood forest, which support numerous species of aquatic fauna, birds, mammals, reptiles, and amphibians. The ecological services provided by the property will be preserved in perpetuity through the placement of a conservation easement.

TRD-200603229
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 13, 2006

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 24, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 24, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or

the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Big Chipper of Texas, Inc. dba Big Chipper Parker Road Recycling Facility; DOCKET NUMBER: 2005-1521-MSW-E; TCEQ ID NUMBER: RN104497790; LOCATION: 1629 Parker Road, Carrollton, Denton County, Texas; TYPE OF FACILITY: wood recycling facility; RULES VIOLATED: 30 TAC §330.4(f)(1)(B), by failing to obtain a permit or registration prior to the storage, processing, removal, or disposal of municipal solid waste; 30 TAC §37.921 and §328.5(d), by failing to demonstrate financial assurance for closure of the facility; PENALTY: $4,000; STAFF ATTORNEY: Robert Mosley, Litigation Division MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bob Perry dba Amistad American Camp Ground; DOCKET NUMBER: 2006-1827-PWS-E; TCEQ ID NUMBER: RN102676715; LOCATION: Highway 90 West, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine bacteriological samples at a frequency based on the population served by the facility; 30 TAC §290.122(c)(2)(B) and THSC, §341.033(d), by failing to notify persons served by the facility of the failure to collect routine bacteriological samples by direct delivery or by continuously posting the notice in conspicuous places within the area served by the facility; PENALTY: $1,980; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(3) COMPANY: Jerry Barger dba Barger Salvage Yard; DOCKET NUMBER: 2005-1665-WQ-E; TCEQ ID NUMBER: RN104458294; LOCATION: 497 Apache Street, Kempner, Lampasas County, Texas; TYPE OF FACILITY: automotive salvage yard; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: $5,350; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Jon A. Friend dba Besaw's Cafe; DOCKET NUMBER: 2005-1487-PWS-E; TCEQ ID NUMBER: RN101191484; LOCATION: 3506 Battleground Road, Harris County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the public drinking water supply and failed to provide public notification of the failure to conduct monthly bacteriological sampling during the months of May through August 2003 and November 2003 through April 2005; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all Fiscal Year 2005 Public Health Service fees, including all late fees, for TCEQ Financial Administration Account No. 31011039; PENALTY: $12,925; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Milton Doss; DOCKET NUMBER: 2005-1584-MLM-E; TCEQ ID NUMBERS: 26819 and RN104601877; LOCATION: 5500 -5490 Greenforest Lane outside of Texarkana, Bowie County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.4(a) and TWC, §26.121(c), by failing to dispose of municipal solid waste, scrap tires, five-gallon plastic buckets, air conditioning refrigerant bottles, refrigerators, sofas, mattresses, carpet, carpet pad, construction debris, trees, and brush at an authorized site and failed to prevent an unauthorized discharge into or adjacent to waters in the state; 30 TAC §111.219(7) and THSC, §382.085(b), by burning unauthorized materials including scrap tires, construction debris, plastics, railroad ties, shingles, freon cylinders, and municipal solid waste at the site; 30 TAC §330.4(a) and TWC, §26.121(c), by failing to dispose of municipal solid waste, scrap tires, construction debris, trees, and brush at an authorized site and failed to prevent an unauthorized discharge into or adjacent to waters in the state; PENALTY: $5,400; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Nelco Distributing Company dba Nelco Corner; DOCKET NUMBER: 2005-1223-PST-E; TCEQ ID NUMBER: RN104557921; LOCATION: 1045 South State Highway 359, Mathis, San Patricio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tank (UST) systems; 30 TAC §334.22(a) and §334.128(a) and TWC, §5.702, by failing to pay UST fees for fiscal years 2001, 2002, 2003, 2004, and 2005 and aboveground storage tank fees for 2003, 2004, and 2005; PENALTY: $4,200; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Price Construction, Ltd.; DOCKET NUMBER: 2005-0295-AIR-E; TCEQ ID NUMBERS: 907901D and RN102743747; LOCATION: one mile east of University Avenue on North Loop 289, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a)(2)(A) and THSC, §382.085(b), by failing to submit a registration for the installation of a pollution control device; 30 TAC §116.115(c), New Source Review Air Permit 7901, Special Condition 3, and THSC, §382.085(b), by failing to use only the fuel specified by the permit; PENALTY: $5,500; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(8) COMPANY: Sohail Afridi dba Lumberton Food Mart; DOCKET NUMBER: 2005-1449-PST-E; TCEQ ID NUMBER: RN102353554; LOCATION: 2346 Highway 69 South, Lumberton, Hardin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all UST records at the station and make them available for inspection to commission personnel upon request; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Financial Assurance Account No. 0060267U and associated late fees for fiscal year 2005; PENALTY: $8,925; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Dexter Simpson dba Overton Road Chevron; DOCKET NUMBER: 2004-1971-PST-E; TCEQ ID NUMBERS: 75267 and RN102835766; LOCATION: 3926 East Overton Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Judy Davis dba Judy's Kountry Kitchen; DOCKET NUMBER: 2006-0063-PST-E; TCEQ ID NUMBER: RN102260767; LOCATION: Highway 75 and Farm-to-Market Road 315, Poyner, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), and Agreed Order Docket No. 2004-1480-PST-E, Ordering Provision No. 2.a., by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III); §334.50(d)(1)(B)(ii); and TWC, §26.3475(a) and (c)(1), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the facility; 30 TAC §334.22(a); Agreed Order, Docket No. 2004-1480-PST-E, Ordering Provision No. 2.b.; and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account No. 0054411U for fiscal years 2003, 2004, 2005, and 2006; PENALTY: $21,450; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: Pak Convenience Store, Inc. dba One Stop #15; DOCKET NUMBER: 2005-1154-PST-E; TCEQ ID NUMBER: RN102402179; LOCATION: 8460 Denton Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued delivery certificate, and failed to make immediately available upon request by TCEQ staff a current TCEQ delivery certificate for the USTs at the facility; 30 TAC §334.10(b), by failing to maintain on the premises of the facility all required records, and failed to make those records immediately available for inspection upon request by TCEQ personnel; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay, at the time and in the manner required, outstanding annual facility fees for TCEQ Account No. 0052830U for fiscal year 2006; PENALTY: $6,222; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Tajammal Incorporated dba Super Stop 18; DOCKET NUMBER: 2005-1493-PST-E; TCEQ ID NUMBER: RN102382058; LOCATION: 5480 College Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by California Air Resources Board Executive Order(s), and free of defects that would impair the effectiveness of the system; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain all required Stage II records for review upon request; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor tanks for releases at a frequency of at least once every month; 30 TAC § 334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test line leak detectors at least once per year; 30 TAC § 334.50(b)(2) and TWC, §26.3475(a), by failing to test product piping at least once per year; 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to notify the commission within 24 hours of a suspected release when statistical inventory reconciliation analysis results were "Fail" or "Inconclusive"; 30 TAC §334.74, by failing to conduct release investigation and confirmation steps within 30 days of discovery of a suspected release; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $20,800; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200603248
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 24, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 24, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Highness Enterprises, Inc. dba All Time Food Store; DOCKET NUMBER: 2005-1571-PST-E; TCEQ ID NUMBERS: RN101798361; LOCATION: 29719 Brook Chase Drive, Spring, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), (3), (4), (5), (6), and (7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records onsite at the station ordinarily manned during business hours, and make immediately available for review upon request; 30 TAC §115.245(3) and THSC, §382.085(b), by failing to provide written notification to the appropriate TCEQ Regional Office at least ten working days in advance of the testing date and who will conduct the test; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition including the absence or disconnection of any component that is a part of the approved system; 30 TAC §334.10(b), by failing to maintain the underground storage tank (UST) records as required; 30 TAC § 334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to conduct proper release detection for the piping associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors on an annual basis for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct monthly reconciliation of inventory control records in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of flow-through plus 130 gallons; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems at the station; PENALTY: $5,680; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Hunters Creek Business Park, Ltd.; DOCKET NUMBER: 2005-1873-EAQ-E; TCEQ ID NUMBERS: RN104590567; LOCATION: within the Edwards Aquifer recharge zone, at the southwestern corner of Highway 46 and Oak Run Parkway near New Braunfels, Comal County, Texas; TYPE OF FACILITY: tract of land; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain commission approval of an Edwards Aquifer Protection Plan (EAPP) prior to commencing clearing activities, including clearing trees from the land or the Edwards Aquifer Recharge Zone; PENALTY: $15,000; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Larry Beakey dba BBT Investments; DOCKET NUMBER: 2004-0381-PST-E; TCEQ ID NUMBERS: 21226 and RN102821758; LOCATION: 824 South F Street, Harlingen, Cameron County, Texas; TYPE OF FACILITY: petroleum storage tank facility; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective inventory control for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i)(III), and (b)(2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to monitor the piping associated with the UST system for releases, and by failing to test the piping for performance and operational reliability at least once each year; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with an identification number that is identical to the UST registration and self-certification number; 30 TAC §334.10(b), by failing to maintain records for the UST system; PENALTY: $5,185; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Madat Hirani dba Circle J Food Store; DOCKET NUMBER: 2004-0041-PST-E; TCEQ ID NUMBER: RN102405768; LOCATION: 12310 Cullen Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail fuel sales; RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(4)(C) and TWC, §26.3475(d), by failing to properly maintain and test the cathodic protection system for adequacy of protection once every three years; 30 TAC §334.50(b)(1)(A) and (b)(2)(A)(i) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring and failed to equip the regular unleaded product line with an automatic line leak detector; PENALTY: $4,500; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Metroplex Sand & Gravel, Ltd.; DOCKET NUMBER: 2004-2094-WQ-E; TCEQ ID NUMBER: RN103959144; LOCATION: 10000 Trammel Davis Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: sand dredging operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi-Sector General permit; PENALTY: $5,700; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Rudolphs, Inc. dba Cuero One Stop dba Lantz Shell and dba One Stop 5; DOCKET NUMBER: 2005-1514-PST-E; TCEQ ID NUMBERS: RN101872679, RN101882694, and RN102235249; LOCATION: 710 North Esplanade Street, 102 East Broadway Street, and 101 Industrial Boulevard, Cuero, Dewitt County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all required UST records at the Cuero One Stop Facility and make them available for inspection upon request by commission personnel; 30 TAC §334.10(b), by failing to maintain all required UST records at the Lantz Shell Facility and make them available for inspection upon request by commission personnel; 30 TAC §334.10(b), by failing to maintain all required UST records at the One Stop 5 Facility and make them available for inspection upon request by commission personnel; PENALTY: $3,000; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Shawn & Sameer, Inc. dba Lawn Minit Mart; DOCKET NUMBER: 2005-1664-PST-E; TCEQ ID NUMBER: RN102382827; LOCATION: 6448 United States Highway 84, Lawn,

Taylor County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to have records immediately available for inspection upon request by the TCEQ investigator; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor piping associated with the USTs for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct inventory control reconciliation on a monthly basis sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.49(c)(2)(C) and (c)(4) and TWC, §26.3475(d), by failing to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years, and failing to inspect the rectifier at least once every 60 days; PENALTY: $6,100; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: The Estate of Robert Walker; DOCKET NUMBER: 2005-0418-AGR-E; TCEQ ID NUMBER: RN103022364; LOCATION: 5048 Father Anders Loop, Cistern, Fayette County, Texas; TYPE OF FACILITY: hog farm; RULES VIOLATED: 30 TAC §321.47(c)(1) and TWC, §26.121(a)(1) by failing to locate, construct, and manage the control of facilities and land management unit of an animal feeding operation in a manner that would protect surface and groundwater quality; 30 TAC §321.47(c)(2) by failing to prevent nuisance conditions and minimize odor conditions in accordance with the requirements of 30 TAC §321.31(b) and 30 TAC §321.47(d)(8) by failing to equip the Retention Control Systems with either irrigation, evaporation, or liquid removal systems; 30 TAC §321.47(f)(19)(A) by failing to restrict animals from coming into direct contact with surface water in the state; PENALTY: $6,300; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Toko Foko Inc. dba MSM Food Mart; DOCKET NUMBER: 2004-1785-PST-E; TCEQ ID NUMBERS: 49985 and RN102029402; LOCATION: 6013 North Farm-to-Market Road 565, Baytown, Chambers County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§115.246(6), 115.244(3) and 334.10(b)(1)(B); and THSC, §382.085(b) by failing to maintain a record of the results of the daily and monthly Stage II inspections conducted at the station and failing to maintain UST records pertaining to spill and overfill control records and corrosion protection records; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III); and TWC, §26.3475(c)(1) by failing to perform an annual performance test on the existing line leak detectors and failing to provide the UST system with a method or combination of methods, of release detection capable of detecting a release from any portion of the UST system which contains regulated substances; 30 TAC §334.8(c)(5)(A)(i) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST; 30 TAC §334.8(c)(5)(B)(ii) by failing to ensure that the UST registration and self-certification forms were submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(C) by failing to permanently tag or label each UST fill tube at the facility with the number used to identify the tank on the registration and self-certification form filed with the commission; 30 TAC §334.48(c) by failing to conduct effective manual or automatic inventory control on all UST systems at a retail facility; PENALTY: $9,000; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Town of Hackberry; DOCKET NUMBER: 2005-1107-MWD-E; TCEQ ID NUMBER: RN102077054; LOCATION: the southern end of Maxwell Road, Hackberry, Denton County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13434001, Monitoring and Requirement No. 1, by failing to report discharge monitoring report data for the months from September 2003 through June 2004; 30 TAC §305.125(1), TWC, §26.121(a) and TPDES Permit No. 13434001, Final Effluent Limitations and Monitoring Requirements Nos. 1 and 2, by failing to comply with permitted effluent limits during March, May, June, July, and August 2004; PENALTY: $21,700; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Waco Infinity Properties, Ltd.; DOCKET NUMBER: 2005-1185-AIR-E; TCEQ ID NUMBER: RN104665351; LOCATION: 1207 West McGregor Drive, McGregor, McLennon County, Texas; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by failing to prevent outdoor burning; PENALTY: $1,675; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Yari Enterprises, Inc. dba Git N Go; DOCKET NUMBER: 2004-0445-PST-E; TCEQ ID NUMBER: RN102245263; LOCATION: 302 South 17th Street, West Columbia, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii), by failing to conduct manual or automatic inventory control for all USTs at the facility, and by failing to conduct inventory control reconciliation on a monthly basis; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i)(III), and (b)(2)(A)(ii)(I) and TWC, §26.3475(a) and (c)(1), by failing to test line leak detectors and product piping at least once per year for performance and operational reliability, and by failing to monitor tanks (release detection) for releases at a frequency of at least once every month; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the annual and triennial Stage II testing to verify proper operation of the Stage II equipment; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding underground storage tank fees for TCEQ Financial Administration Account No. 0059929U; PENALTY: $17,100; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Kash 'N' Karry, Inc. dba Magic Texaco; DOCKET NUMBER: 2004-1842-PST-E; TCEQ ID NUMBERS: 65383 and RN101542330; LOCATION: 110 West Southlake Boulevard, Southlake, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury

and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Lakhani Ashraf dba Easy Shop; DOCKET NUMBER: 2005-0178-PST-E; TCEQ ID NUMBERS: 45256 and RN102250693; LOCATION: 3510 South College Avenue, Bryan, Brazos County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Tsuo-Min Chi dba A-Sunnys; DOCKET NUMBER: 2004-1224-PST-E; TCEQ ID NUMBERS: 43969 and RN102281268; LOCATION: 6240 Synott Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two petroleum USTs; PENALTY: $2,100; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603247
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Request for Grant Applications for Fiscal Year 2007 Clean Water Act, §319(h) Grant

The Texas Commission on Environmental Quality (TCEQ) is requesting grant applications for nonpoint source projects that address the objectives, goals, and/or priorities identified in the State of Texas Nonpoint Source Management Program. Funds awarded under this grant may not pay for activities which are required by: a wastewater discharge permit or a storm water permit (although related activities not specifically required by the permits are allowed). This request does NOT seek agricultural or silvicultural projects under the jurisdiction of the Texas State Soil and Water Conservation Board.

Who is eligible to apply?: Grants will be available to all state agencies or political subdivisions of the State of Texas, including cities, counties, school districts, state universities, and special districts. Private, for profit, and nonprofit organizations may participate in projects as partners or contractors but may not apply directly for funding.

How to Apply and When: Information on the CWA, §319 grant program and how to apply for CWA, §319 grant funding can be accessed on the TCEQ Nonpoint Source Web site at *http://www.tceq.state.tx.us/compliance/monitoring/nps/mgmt-plan/index.html*. The grant application packet will be posted on the Texas Procurement and Building Commission's Texas Marketplace Web site at *http://esbd.tbpc.state.tx.us*. The TCEQ will accept applications for consideration of CWA, §319 funding for Fiscal Year 2007 between June 23 and August 23, 2006.

Matching: All projects must include non-federal matching funds of 40% of the project's total costs (i.e., 60/40 match of the 100% total cost, 60% is federal funds and 40% is match funds). Applicants should make an effort to identify other similar work going on within the state. Applicants are encouraged to collaborate and partner with other state or local agencies for measurable nonpoint source pollution reduction.

election Procedures: TCEQ will review the applications, and based on the evaluation criteria, the number of applications submitted, and funds available in each funding category (base and incremental), a portion or potentially all will be invited to submit proposals. A submission request for a proposal does not guarantee full or partial funding through this Request for Grant Application (RFGA). Applicants who are selected will be notified in writing to prepare a proposal and will be assigned to a TCEQ project manager by September 27, 2006. The project manager will work with the applicant to draft and finalize the work plan prior to submittal to the United States Environmental Protection Agency (EPA). EPA will review all work plans prior to TCEQ awarding grant funds.

Questions/Final Addendum: Questions regarding this RFGA will be taken through July 19, 2006. If the applicant has any questions regarding this RFGA contact Regina Adams, Procurements and Contracts, Office of Administrative Services, (512) 239-3427, Fax (512) 239-6004, or email *radams@tceq.state.tx.us*, MC 181, 12100 Park 35 Circle, Building A, Room 123, Austin, Texas 78753. All questions and answers will be posted to the Texas Procurement and Building Commission's Texas Marketplace Web site at *http://esbd.tbpc.state.tx.us* for public viewing. Any final addendum to this RFGA will be made by August 18, 2006 and notice will be made on the Texas Marketplace.

Grant Schedule: The following dates are included in the Fiscal Year 2007 Grant Application Process: June 23, 2006 - RFGA Start Date; July 19, 2006 - Deadline for questions regarding RFGA; August 18, 2006 - Final Addendum to RFGA to the Texas Procurement and Building Commission's Texas Marketplace; August 23, 2006 - Deadline for submitting applications; September 27, 2006 - Potential applicants will be notified in writing to submit proposals; November 22, 2006 - Final work plans are due for submittal to EPA; March 2007 - Projected date of EPA Award; April 2007 - (Contingent on EPA Award) TCEQ initiates contracts with applicants.

TRD-200603220
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Nitrate-Nitrogen in Lower Sabinal River Watershed

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft implementation plan concerning nitrate-nitrogen loading in the Lower Sabinal River of the Nueces River Basin. TCEQ will also conduct a public meeting to receive comments on the implementation plan.

Lower Sabinal River (Segment 2110), located in Uvalde County, is included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. As required by §303(d) of the federal Clean Water Act, a Total Maximum Daily Load (TMDL) was developed for nitrate-nitrogen. The TMDL was adopted by the commission on August 10, 2005, as an update to the State Water Quality Management Plan. Upon adoption by the commission, the TMDL was submitted to the United States

Environmental Protection Agency (EPA) for review and approval. EPA approved the TMDL on October 13, 2005. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

A public meeting will be held in Sabinal, Texas, on June 27, 2006, at 7:00 p.m., at the Sabinal City Hall, located at 501 North Center Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting. The purpose of the public meeting is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: description of control actions and management measures, implementation schedule, legal authority, follow-up monitoring plan, measurable outcomes, and communication strategy. After the public comment period, TCEQ staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TCEQ Web site at *http://www.tceq.state.tx.us/implementation/water/tmdl/index.html*.

Written comments should be submitted to Ward Ling, TCEQ TMDL Section, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., July 14, 2006, and should reference *Implementation Plan for One Total Maximum Daily Load for Nitrate-Nitrogen in Lower Sabinal River, For Segment 2110*. For further information regarding this proposed TMDL implementation plan, please contact Ward Ling, TCEQ Central Office, at (512) 239-6238 or *eling@tceq.state.tx.us*. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's Web site or by calling (512) 239-4900.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200603219
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Polychlorinated Biphenyls in Fish Tissue in the Lake Worth Watershed

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft implementation plan concerning polychlorinated biphenyls (PCBs) in fish tissue in Lake Worth of the Trinity River Basin. TCEQ will also conduct a public meeting to receive comments on the implementation plan.

Lake Worth (Segment 0807), located in Tarrant County, is included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. As required by the federal Clean Water Act, §303(d) a Total Maximum Daily Load (TMDL) was developed for PCBs in fish tissue. The TMDL was adopted by the commission on August 10, 2005, as an update to the State Water Quality Management Plan. Upon adoption by the commission, the TMDL was submitted to the United States Environmental Protection Agency (EPA) for review and approval. EPA approved the TMDL on October 13, 2005. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

A public meeting will be held in Fort Worth, Texas, on July 6, 2006, at 7:00 p.m., at the Fort Worth City Hall, City Council Chamber located at 1000 Throckmorton Street. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting. The purpose of the public meeting is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: description of control actions and management measures, implementation schedule, legal authority, follow-up monitoring plan, measurable outcomes, and communication strategy. After the public comment period, TCEQ staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TCEQ Web site at *http://www.tceq.state.tx.us/implementation/water/tmdl/index.html*.

Written comments should be submitted to Roger Miranda, Texas Commission on Environmental Quality, Chief Engineer's Office, TMDL Section, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., July 14, 2006, and should reference *Implementation Plan for One Total Maximum Daily Load for Polychlorinated Biphenyls (PCBs) in Fish Tissue in Lake Worth, For Segment 0807*. For further information regarding this proposed TMDL implementation plan, please contact Roger Miranda, TCEQ Central Office, at (512) 239-6278 or *rmiranda@tceq.state.tx.us*. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's Web site or by calling (512) 239-4900.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200603227
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Total Dissolved Solids and Chlorides in the Clear Creek Above Tidal Watershed

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft implementation plan concerning total dissolved solids and chlorides loading in the Clear Creek Above Tidal watershed of San Jacinto-Brazos River Basin. TCEQ will also conduct a public meeting to receive comments on the implementation plan.

Clear Creek Above Tidal (Segment 1102), located in Fort Bend, Harris, Brazoria, and Galveston Counties, is included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. As required by

§303(d) of the federal Clean Water Act, Total Maximum Daily Loads (TMDLs) were developed for total dissolved solids and chlorides. The TMDLs were adopted by the commission on April 12, 2006, as updates to the State Water Quality Management Plan. Upon adoption by the commission, the TMDLs were submitted to the United States Environmental Protection Agency for review and approval. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

A public meeting will be held in Pearland, Texas, on July 11, 2006, at 7:00 p.m., at the Pearland City Hall Council Chambers, located at 3519 Liberty Drive. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the meeting; however, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after the meeting. The purpose of the public meeting is to provide the public an opportunity to comment on the proposed plan. The commission requests comment on each of the six major components of the implementation plan: description of control actions and management measures, implementation schedule, legal authority, follow-up monitoring plan, measurable outcomes, and communication strategy. After the public comment period, TCEQ staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TCEQ Web site at *http://www.tceq.state.tx.us/implementation/water/tmdl/index.html*.

Written comments should be submitted to Andrew Sullivan, TCEQ TMDL Section, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., July 14, 2006, and should reference *Implementation Plan for Two Total Maximum Daily Loads for Total Dissolved Solids and Chlorides in Clear Creek above Tidal, For Segment 1102*. For further information regarding this proposed TMDL implementation plan, please contact Andrew Sullivan, TCEQ Central Office, at (512) 239-4587 or *asulliva@tceq.state.tx.us*. Copies of the document summarizing the proposed TMDL implementation plan can be obtained via the commission's Web site or by calling (512) 239-4900.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200603221
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 13, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of June 2, 2006 through June 8, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

Apple Springs Independent School District has applied for a renewal of TPDES Permit No. 14086-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,200 gallons per day. The facility is located approximately 1,000 feet northwest of the intersection of Farm-to-Market Road 357 and Farm-to-Market Road 2501, and north of State Highway 94 in Trinity County, Texas.

City of Deport has applied for a renewal of TPDES Permit No. 10741-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 183,000 gallons per day. The facility is located approximately 1000 feet south of U.S. Highway 271 and 1400 feet west of the intersection of Farm-to-Market Road 1149 and U.S. Highway 271 in Lamar County, Texas.

City of Joaquin has applied for a renewal of TPDES Permit No. 12718-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 137,000 gallons per day. The facility is located approximately 2,700 feet northeast of the intersection of Jackson Street and U.S. Highway 84 in the City of Joaquin in Shelby County, Texas.

City of Presidio has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TPDES Permit No. WQ0014679001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,250,000 gallons per day. The facility will be located approximately 1.5 miles southeast of the City of Presidio on the north side of Farm-to-Market Road 170 in Presidio County, Texas.

City of Sabinal has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014689001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 340,000 gallons per day. The facility will be located approximately 5,300 feet south of the intersection of State Hwy. 187 and Dunlap Avenue, along Dunlap Avenue and Rhylander Road (County Road 386) in Uvalde County, Texas.

City of Yantis has applied for a renewal of TPDES Permit No. 12187-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately one mile south of the intersection of Farm-to-Market Road 17 and State Highway 154 in Wood County, Texas.

LeTourneau, Inc., which operates a heavy equipment manufacturing plant, has applied for a renewal of TPDES Permit No. WQ0001603000, which authorizes the discharge of contact and noncontact cooling water, parts/equipment washdown water, storm water runoff, and previously monitored effluents (wastewater from the vacuum degassing process, non contact cooling water, contact cooling water, and storm water via internal Outfall 101 and wastewater from the hot forming process via internal Outfall 201) on an intermittent and flow variable basis via Outfall 001. The facility is located at 2400 S. McArthur Boulevard, approximately 0.25 mile northwest of the intersection of Estes Parkway and Farm-to-Market Road 1845, and approximately 0.75 mile north of Interstate Highway 20 in the southwestern portion of the City of Longview, Gregg County, Texas.

Mallard Point WWTP, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 14215-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The proposed permit would also authorize the disposal of treated domestic wastewater via irrigation on 40 acres of a 90 acre golf course. The facility is located approximately 8,650 feet north and 2,000 feet west of the intersection of Farm-to-Market Road 1,564 and U.S. Highway 69 in Hunt County, Texas.

Town of Ponder has applied for a renewal of TPDES Permit No. 11287-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 2,500 feet southeast of the intersection of Farm-to-Market Road 2449 and Farm-to-Market Road 156, approximately 1,200 feet east of Farm-to-Market Road 156 and 1,600 feet south of Farm-to-Market Road 2449 in Denton County, Texas.

TRD-200603267
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2006

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Notice of Water Rights Application

Notice issued on June 13, 2006:

APPLICATION NO. 5927 Michael L. Gilbert and Donna G. Gilbert, 7405 96th Street, Lubbock, Texas 79424, applicants, have applied for a Water Use Permit to divert and use not to exceed 90 acre-feet of water per year from Running Water Draw, Brazos River Basin, for agricultural (irrigation) purposes in Hale County. The application was received on November 14, 2005. Additional information was received on February 6 and March 10, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 21, 2006. Ownership of the land is evidenced by a Warranty Deed with Vendor's Lien filed as Volume 978, Page 4211 in the Hale County Clerk's Office. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200603266
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 6, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Huntsman Petrochemical Corporation; SOAH Docket No. 582-05-7505; TCEQ Docket No. 2004-1505-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Huntsman Petrochemical Corporation on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200603270
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on June 6, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Murrill Len Baxley dba Texas Defensive Shooting Academy; SOAH Docket No. 582-05-5033; TCEQ Docket No. 2003-0029-MSW. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Murrill Len Baxley dba Texas Defensive Shooting Academy on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200603269
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 14, 2006

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Department of Family and Protective Services

Interagency Coordinating Council (ICC) for Building Healthy Families Public Hearing

The Interagency Coordinating Council (ICC) for Building Healthy Families, as established by the 79th Texas Legislature House Bill (HB) 1685, facilitates communication and collaboration concerning policies for the prevention of and early intervention in child abuse and neglect among state agencies whose programs and services promote and foster healthy families. To that end, the Council prepared and submitted to the Texas Legislature an inventory of the child abuse and neglect prevention and early intervention policies, programs, and activities of each agency represented on the council. The Council requests that those wanting to provide public input also review the inventory, which is available on the Department of Family and Protective Services (DFPS) website at: http://www.dfps.state.tx.us/Prevention_and_Early_Intervention/About_Prevention _and_Early_Intervention/icc.asp

The ICC will conduct a public hearing to solicit input from stakeholders to complete their charge in making recommendations to the Texas Legislature for improving the coordination and collaboration of child abuse and neglect prevention and early intervention program and services among state agencies. The Public Hearing will be held on July 27, 2006, beginning at 1:00 p.m. and ending at 4:00 p.m. in the Public Hearing Room (125W) on the first floor of the John H. Winters Building, 701 W. 51st Street, Austin, Texas. The ICC requests that testimonies focus on the following questions:

(1) How can state agencies better collaborate and coordinate to improve child abuse and neglect prevention programs and services?

(2) Do you have any suggestions for how state agencies can support communities and providers in implementing evidence-based programs?

(3) What best evidence-based and cost-effective prevention programs do we lack in Texas?

(4) Are there areas in Texas where demand for child abuse and neglect prevention services far exceeds availability?

(5) Do you have any feedback to provide regarding the ICC Inventory Report?

To ensure an opportunity for all who wish to present, those attending the public hearing should anticipate limiting their presentations to 10 minutes. Time limits may be adjusted at the hearing based on the actual attendance.

In lieu of public testimony, members of the public may submit written comments through a link designed for this purpose http://www.surveymonkey.com/s.asp?u=730222238183. Written comments may also be submitted via email to ICC@dfps.state.tx.us or to Rachel Porter-Daniel at DFPS-PEI, P.O. Box 149030, Mail Code Y-956, Austin, TX 78714-9030. Comments submitted after July 27, 2006, may not be considered.

Persons with disabilities planning to attend this meeting who need auxiliary aids or services may contact Rachel Porter-Daniel at (512) 821-4745, no later than July 10, 2006, so that appropriate arrangements can be made. A computer with a CD drive (requires Windows Office 2000 or less) and Internet connection, as well as a projector, will be available to presenters at the public hearing. Presenters requiring other audio or visual equipment for presentations should contact Rachel Porter-Daniel at (512) 821-4745, no later than July 10, 2006.

TRD-200603241
Gerry Williams
General Counsel
Department of Family and Protective Services
Filed: June 13, 2006

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-024, Amendment Number 742, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to comply with the Deficit Reduction Act of 2005, Section 6036, "Improved Enforcement of Documentation Requirements." (Public Law Number 109-171, February 8, 2006). The Deficit Reduction Act requires Medicaid applicants and recipients who declare to be a United States citizen or national to furnish satisfactory documentary evidence of United States citizenship as defined in the Act. The proposed amendment is effective July 1, 2006.

The proposed amendment is estimated to result in a cost of $709,141 in state funds and $1,644,553 in total funds for State Fiscal Year (SFY) 2006. Additional cost in SFY 2007 is not anticipated.

To obtain copies of the proposed amendment, interested parties may contact Glennell Berry by mail at Office of Family Services, Texas Health and Human Services Commission, P.O. Box 12668, mail code 2039, Austin, Texas 78711-2668; by telephone at (512) 206-4545; by fax at (512) 206-4556; or by e-mail at glennell.berry@hhsc.state.tx.us.

Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-200603273
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 14, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing, Low Income Home Energy Assistance Program (LIHEAP) Plan FFY 2007

For the fiscal year that begins October 1, 2006, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans with home energy. While in the process of deciding how to use Low-Income Home Energy Assistance Program (LIHEAP) funds, TDHCA now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct a public hearing and post the proposed plan on the TDHCA internet site. Primarily, the hearing solicits comments on the proposed use and distribution of federal fiscal year (FFY) 2007 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and utility assistance--known as "Comprehensive Energy Assistance Program (CEAP)".

The public hearing has been scheduled as follows:

Tuesday, July 18, 2006, 2:00 p.m.

Room #116, TDHCA Headquarters,

221 East 11th St.

Austin, Texas

A representative from TDHCA will explain the planning process and receive comments from interested citizens and affected groups regard-

ing the proposed plan for LIHEAP subrecipients. A copy of the Draft LIHEAP Plan may be obtained after June 23, 2006, through TDHCA's web site, http://www.tdhca.state.tx.us/ea.htm or by contacting the Texas Department of Housing and Community Affairs, Community Affairs Division, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941, or by phone at (512) 475-1435.

Anyone may submit comments on the draft plan in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than 5:00 p.m., Monday, July 24, 2006. Comments concerning the draft plan may be submitted via the Internet to john.touchet@tdhca.state.tx.us or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If you have any questions regarding the public hearing process or any of the programs referenced above, please contact TDHCA, Community Affairs Division, Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact John Touchet, (512) 475-1435 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200603230
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 13, 2006

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits proposals from individuals and organizations interested in providing technical assistance for the Gulf Coast Workforce Board staff in the further development and implementation of projects for the Ideal Work Environment Workgroup of the Health Services Steering Committee. The Workforce Board's system offers service for the more than 110,000 businesses and 5.2 million residents of a 13-county area that includes Houston, Harris County, and the twelve surrounding counties. Prospective bidders may obtain a copy of the Request for Proposals online at http://h-gac.com or http://www.theworksource.org or by contacting Carol Kimmick or Angela Bergaila at (713) 627-3200 or by sending an email to carol.kimmick@h-gac.com. Responses are due at H-GAC offices by 12:00 noon on Monday, July 17, 2006. H-GAC does not accept late proposals, and we will not make exceptions.

TRD-200603239
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: June 13, 2006

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Texas Department of Insurance

Company Licensing

Application to change the name of MINNESOTA INSURANCE COMPANY to AIG ADVANTAGE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in St. Paul, Minnesota.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200603265
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 14, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of PROVIDENT AGENCY, INC., a foreign third party administrator. The home office is PITTSBURGH, PENNSYLVANIA.

Application for incorporation in Texas of NEW BENEFITS, LTD., a domestic third party administrator. The home office is DALLAS, TEXAS.

Application to change the name and home office of WAUSAU BENEFITS, INC., WAUSAU, WISCONSIN to FISERV HEALTH PLAN ADMINISTRATORS, INC. (using the assumed name FISERV HEALTH-WAUSAU BENEFITS), a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200603088
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 7, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of STARMOUNT FINANCIAL CORPORATION, INC., to ALWAYSCARE BENEFITS, INC., a foreign third party administrator. The home office is BATON ROUGE, LOUISIANA.

Application to change the name of CITISTREET ASSOCIATES OF TEXAS, INC., to METLIFE ASSOCIATES OF TEXAS, INC., a domestic third party administrator. The home office is IRVING, TEXAS.

Application to change the name of ADVANCEPCS HEALTH, L.P., to CAREMARKPCS HEALTH, L.P., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200603281
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 14, 2006

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Texas Lottery Commission

Instant Game Number 621 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 621 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 621 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 621.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000, $30,000, and MONEYSTACK SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 621 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU
MONEYSTACK SYMBOL	WIN$

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are: Table 2 of this section.

Figure 2: GAME NO. 621 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
EGT	$8.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $1,000, $3,000 or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (621), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001and end with 250 within each pack. The format will be: 621 -0000001-001.

L. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 621 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any of YOUR NUMBERS play symbols to any of the 3 LUCKY NUMBERS play symbols, the player wins the prize shown for that number. If the player reveals a "moneystack" symbol, the player wins the prize instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate Lucky Numbers on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The auto win symbol will never appear more than once on a ticket.

F. No duplicate non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of $1,000, $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No lia-

bility for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 621. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 621 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	927,360	10.87
$4	594,720	16.95
$6	171,360	58.82
$8	40,320	250.00
$10	90,720	111.11
$12	100,800	100.00
$20	70,560	142.86
$50	37,380	269.66
$200	8,316	1,212.12
$1,000	210	48,000.00
$3,000	23	438,260.87
$30,000	6	1,680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 621 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 621, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603262

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 14, 2006

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Instant Game Number 687 "$50,000 Payday"

1.0 Name and Style of Game.

A. The name of Instant Game No. 687 is "$50,000 PAYDAY". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 687 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 687.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $5.00, $10.00, $15.00, $25.00, $50.00, $100, $500, $5,000, $50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, MONEY STACK SYMBOL and COIN SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 687 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$5,000	FIV THOU
$50,000	50 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
MONEY STACK SYMBOL	DOUBLE
COIN SYMBOL	AUTO

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 687 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00 or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

I. High-Tier Prize - A prize of $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (687), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 687-0000001-001.

L. Pack - A pack of "$50,000 PAYDAY" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be; the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 PAYDAY" Instant Game No. 687 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 PAYDAY" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the prize shown for that number. If a player reveals a "coin" symbol, the player wins the prize shown instantly. If a player reveals a "money stack" symbol, the player wins DOUBLE the prize shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 43 (forty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to twenty (20) times in this play area.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. On all tickets, a non-winning prize will never occur more than three (3) times.

F. No duplicate WINNING NUMBERS will appear on a ticket.

G. The "money stack" symbol and "coin" symbol will never appear as a "WINNING NUMBER".

H. The "money stack" symbol will win DOUBLE the prize amount shown and will win as per the prize structure.

I. The "money stack" and "coin" symbols may appear on the same winning ticket.

J. The "coin" symbol will win the prize amount shown below it automatically.

K. The "coin" symbol will never appear more than once on a ticket.

L. YOUR NUMBERS will never equal the corresponding Prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 PAYDAY" Instant Game prize of $5.00, $10.00, $15.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 PAYDAY" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 PAYDAY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 PAYDAY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 PAYDAY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 687. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 687 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	638,400	7.89
$10	588,000	8.57
$15	134,400	37.50
$25	63,000	80.00
$50	35,280	142.86
$100	18,060	279.07
$500	1,260	4,000.00
$5,000	14	360,000.00
$50,000	4	1,260,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 687 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 687, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603263

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 14, 2006

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) expects to issue a Request for Proposals seeking a qualified contractor to manage the delivery of federal and state funded child care services in the 26 counties of the Panhandle Workforce Development Area.

The award will be based primarily on a proposer's qualifications; organizational, administrative and fiscal capabilities; service delivery abilities and strategies; and costs effectiveness. Proposers must be willing to provide services in all counties and operate on a cost reimburse-

ment basis. The initial funding period for the contract to be awarded as a result of this solicitation is expected to be from October 1, 2006 through September 30, 2007. Contract renewals may be awarded for up to three additional one-year periods. Such renewals will be subject to criteria that include acceptable performance, continued qualification to perform associated work and mutual agreement of the parties.

Organizations interested in submitting a proposal are encouraged to attend a Proposer's Conference at 1:30 p.m. on Tuesday, July 11, 2006 in the PRPC 3rd Floor Conference Room, 415 West Eighth Avenue, Amarillo, Texas. Sealed proposals must be submitted to PRPC by 3:00 p.m. on Friday, July 28, 2006. A copy of the Request for Proposals may be obtained by contacting Tony White, Workforce Development Budget, Contracts and Monitoring Manager at (806) 372-3381 or (800) 477-4562.

TRD-200603231
Anthony White
WFD Budget, Contracts and Monitoring Manager
Panhandle Regional Planning Commission
Filed: June 13, 2006

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Public Utility Commission of Texas

Additional Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 26, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Clearwire Telecommunications Services, LLC for a Service Provider Certificate of Operating Authority, Docket Number 32650 before the Public Utility Commission of Texas.

Applicant intends to provide T1-Private Line, and DSI or higher capacity transport, special access & 911 access.

Applicant's initial requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas and Verizon Southwest. Additional geographic areas included in the application amendment of June 1, 2006, are Taylor Telephone Cooperative, Inc., Valor Telecommunications of Texas, Texas-ALLTEL, Inc., ALLTEL (d/b/a Sugarland Telephone Company) and Sprint-Centel (d/b/a Sprint Communications Company, L.P.).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 28, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32650.

TRD-200603237
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2006

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on June 9, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Wilson County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Elmendorf Zone (San Antonio) and the Floresville Exchange (Verizon); Docket Number 32805.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T Texas's Elmendorf Zone of the San Antonio metropolitan exchange and Verizon's Floresville exchange to allow AT&T to provide local exchange telephone service to a proposed new subdivision. The proposed boundary amendment will transfer a small portion of territory from Verizon to AT&T Texas. Verizon has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by June 30, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32805.

TRD-200603235
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 8, 2006, Trans Texas Technologies filed an application with the Public Utility Commission of Texas (Commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60435. Applicant intends to reflect a change in its service area to include the entire State of Texas.

The Application: Application of Trans Texas Technologies for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32798.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 28, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32798.

TRD-200603238
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2006

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on June 6, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (East Bank Subdivision); Docket Number 32790.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Ron Valentin requesting BPUB to provide electric utility service to a proposed 100.33 acre subdivision located in northwest Brownsville. The estimated cost to BPUB to provide service to this proposed area is $434,041.66. The area is presently undeveloped. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 30, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32790.

TRD-200603236
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2006

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Notice of Petition for Waiver of Denial of Request for Number Block

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on June 6, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Time Warner Telecom of Texas, L.P.'s (TWTC) request for an additional thousands block in the Georgetown, Texas rate center.

Docket Title and Number: Petition of Time Warner Telecom of Texas, L.P. for State Waiver to Obtain an Individual Growth Block from Pooling Administrator. Docket Number 32792.

The Application: TWTC requested an additional thousands block to allow it to have the ability to offer local two-way calling and extended metro service in the Georgetown, Texas rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 28, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32792.

TRD-200603101
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2006

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Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The Texas Residential Construction (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience, and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC § 303.300(i)(2), the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Crawford Renovation Group, Inc., 9019 Pagewood, Houston, Texas 77063. Crawford Renovation Group, Inc., holds TRCC builder registration #11426. The applicant's registered agent is Benjamin Crawford.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P. O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200603271
Christopher Burnett
Assistant General Counsel
Texas Residential Construction Commission
Filed: June 14, 2006

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Texas Tech University System

Notice of Request for Legal Counsel for Intellectual Property

Research and scholarship on the part of members of the faculty, staff, and students of Texas Tech will result in inventions, biological materials and other proprietary materials, plants, manuscripts, patentable and non-patentable, computer software, and trade secrets or other products, medical treatments and devices that are potentially marketable and the rights in which should be adequately protected. For assistance with such issues, Texas Tech will engage outside counsel for review of and advice regarding intellectual property matters as they relate to academia and medical technology, including evaluating patentability of technologies, preparing, filing, prosecuting, and maintaining patent applications, dealing with United States Patent Office, including response to Office Actions from the Patent Office, and assuring payment of issue and maintenance fees. Texas Tech will also engage outside counsel from time to time to pursue litigation against infringers of intellectual property rights. The law firm/attorney must be admitted to practice before the United States Patent and Trademark Office.

Responses to this RFP should include at least the following:

(1) description of the firms or attorneys for performing legal services, including prior experience in intellectual property matters, specifically as they relate to institutions of higher education and schools of

medicine, your firm's experience in the field of patent law, including the size and scope of the practice, the number of attorneys active in the practice and other resources of the firm relevant to the practice;

(2) the names, experience and technical expertise of each attorney who may be assigned to work on such matters;

(3) the availability of the lead attorney and others assigned to the project;

(4) appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services;

(5) submission of fee information (either in the form of hourly billing rates for each attorney and other staff members who may be assigned to perform such services in relation to Texas Tech's intellectual property matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses;

(6) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner;

(7) full contact information for the firm;

(8) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to Texas Tech or any component entity, the State of Texas, or any of its board, agencies, commissions, universities, or elected or appointed officials(s); and

(9) confirmation of willingness to comply with Texas Tech's and the Texas Attorney General's policies, directives, and guidelines.

Proposals sent in response to this RFP will be evaluated in light of several criteria, including: expertise, availability of a lead attorney, prior experience in handling intellectual property matters relating to higher education and schools of medicine, procedures for providing timely and cost-effective services, and reasonableness of fees. Although the fee structure and overall cost of this representation will be an important factor in evaluating proposals submitted in response to this RFP, the successful firm(s) will clearly demonstrate exceptional expertise and experience with the intellectual property matters made the subject of this RFP.

Proposals must remain firm as to services and fees for 90 days. No proposals will be accepted by oral communication, electronic mail, telegraphic transmission, or facsimile transmission.

Three copies of the proposal are requested. The proposal should be typed, preferably double-spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "RESPONSE TO REQUEST FOR PROPOSAL, INTELLECTUAL PROPERTY COUNSEL" and addressed to Jennifer Adling, Director of Contracting, as set forth below.

All questions shall be submitted through the Contracting Office in writing. Oral responses to questions will not be binding on the University. Questions may be submitted by Fax (806) 742-0350 or email jennifer.adling@ttu.edu.

The proposal should describe the scope of services and the deliverables to be provided. An original and three copies of the proposal should be submitted in writing by 3:00 p.m., central time, July 21, 2006 to:

Jennifer Adling

Director of Contracting

Texas Tech University

15th Street & University Avenue

327 Drane Hall

Lubbock, Texas 79409-1101

(806) 742-3841

Any proposal received after the above listed time and date will be rejected as a material failure. The University is not responsible for the failure of carrier services to deliver on time.

Texas Tech University reserves the right to accept or reject any (or all) proposals submitted. Issuance of this request for proposal in no way obligates The University to award a contract or to pay any costs incurred in the preparation of a response.

It is the policy of the System to actively seek the involvement of Historically Underutilized Businesses (minority-owned and women-owned businesses). Accordingly, Historically Underutilized Businesses (HUBs) qualified to do so are encouraged to submit a proposal in accordance with this RFP.

TRD-200603148
Jennifer Adling
Director of Contracting
Texas Tech University System
Filed: June 12, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Wharton, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Wharton, Wharton Regional Airport. TxDOT CSJ No.:06HGWHRTN. Scope: Provide engineering/design services for site development and associated appurtenances for a pre-engineered metal aircraft hangar building system, drainage improvements, and installation of REILs at the Wharton Regional Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Wharton Regional Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To

ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **Monday, July 17, 2006, at 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Megan Caffall, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200603218
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 13, 2006

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Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Edinburg, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Edinburg, Edinburg International Airport. TxDOT CSJ No.:06HGEDINB. Scope: Provide engineering/design services for site development and associated appurtenances for a pre-engineered metal aircraft hangar building system at the Edinburg International airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Edinburg International Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT website, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Eight completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **Monday, July 17, 2006, at 4:00 p.m.** Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Megan Caffall, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200603260
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 14, 2006

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Request for Information

REGARDING THE DEVELOPMENT AND IMPLEMENTATION OF THE COMPREHENSIVE DEVELOPMENT AGREEMENT PROCUREMENT PROCESS

The Texas Department of Transportation ("TxDOT") is seeking information to assist in developing and implementing its Comprehensive Development Agreement ("CDA") procurement process. This Request for Information ("RFI") is issued solely to obtain information to assist TxDOT on an administrative level. It does not constitute a Request for Qualifications ("RFQ"), a Request for Proposals ("RFP"), or other solicitation document; nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit TxDOT to contract for any supply or service whatsoever. TxDOT will not pay for any information or administrative cost incurred in response to this RFI. Responses to this RFI are due by noon, Central Daylight Time, on July 3, 2006. See Sections 3 and 4 for further information.

1. OVERVIEW

TxDOT has initiated an aggressive CDA program - working with the private sector to meet the transportation needs of the State of Texas for generations to come. A critical element of the program is the procure-

ment process utilized to solicit proposals and select preferred partners. A sound framework for procurement will enable TxDOT to meet its objectives and provide a stable, predictable deal flow for the market over the next several years.

While TxDOT is committed to doing what is in the best interests of the taxpayers and traveling public, we strive to create a pro-business environment as well, by capturing private sector innovation in ways that are prudent. TxDOT places great importance on developing efficient, effective and transparent procurement processes. As the pace of development picks up, TxDOT wishes to engage the market to solicit feedback on our current approach and identify opportunities for improvement - building upon the lessons learned from what has proved successful in public-private partnership transactions in the United States and around the world.

By responding to this RFI, you can provide valuable input and help shape the framework for competition in Texas.

Currently, the procurement process for a "typical" CDA competition, for a project that has already reached or is near environmental clearance, consists of the key stages set forth in the following chart.

CDA Procurement Stage Chart

CDA Procurement Stage	Procurement Timing
1. Proposer submission of Qualification Statements in response to RFQ	Day ___
2. TxDOT issues short-list of potential proposers (typically, 3-4 teams)	Day ___
3. TxDOT issues draft RFP to short-listed proposers	Day ___
4. Industry review meetings - a series of one-on-one meetings with short-listed proposers	Day ___
5. TxDOT issues final RFP to short-listed proposers	Day ___
6. Proposer submission of Proposals in response to RFP	Day ___
7. TxDOT selection of preferred proposer(s)	Day ___
8. BAFO (if necessary)	Day ___
9. TxDOT selection of preferred proposer	Day ___
10. Completion of negotiation of alternative technical concepts and other final issues; execution of CDA	Day ___
11. Contract allowance for close of finance, including TIFIA credit	Day ___

2. INFORMATION REQUESTED

TxDOT is interested in your views on our current and anticipated procurement processes. In responding to this RFI, TxDOT asks parties to submit their perspectives on as many of the following issues as possible. Please number the answers to match the question numbers below. In addition, please provide a brief (no more than 3 pages) summary of your organization and your previous experience with large transportation-related procurements and other relevant qualifications.

A. Procurement Timing

TxDOT aims to have aggressive procurement schedules that still provide proposers enough time to develop high quality submittals.

A1. In a standard "best value," hard price proposal process, how much time do you think TxDOT should allow for each stage of the procurement process identified in Section 1 above? The Procurement Timing column in the above chart is designed to track the estimated number of days from the issuance of the RFQ (solicited and unsolicited procurements) to reach the CDA procurement stage at issue. If helpful, you may fill in the Procurement Timing column in the chart with your estimates of the number of days needed to reach each procurement stage.

A2. In particular, how much time do you need to respond to an RFQ? What factors/characteristics of the RFQ stage dictate the amount of time needed and how predictable are these factors?

A3. How much time do you need to respond to an RFP? What factors/characteristics of the RFP stage dictate the amount of time needed and how predictable are these factors?

B. Short-Listing

In general, TxDOT believes that the short-listing process ensures not only qualified teams, but optimizes and maximizes the procurement competition and allows for one-on-one meetings in a narrowed universe.

B1. Do you support a short-listing step? Why or why not?

B2. From the perspective of a developer investing significant funds to prepare a proposal, how many teams do you believe should be short-listed (even if there are many strong teams responding to an RFQ)?

B3. What do you believe to be the most appropriate criteria for creating a short-list at the RFQ stage?

C. Proposer/Subcontractor Prequalification and Pre-Certification

TxDOT recently received legislative authority to proceed directly to the proposal stage of any CDA procurement for a design-build project. The qualifications assessment would be bypassed in favor of a prequalification and pre-certification stage for construction and engineering service providers, respectively, but only on design-build CDA projects. TxDOT currently anticipates that the design-build CDA prequalification and pre-certification program would operate very much like TxDOT's current prequalification program for highway construction projects and its current pre-certification program for engineering services with regard to meeting prequalification/pre-certification requirements on a design-build CDA project. TxDOT is in the process of drafting rules to implement this streamlined CDA process.

C1. What recommendations do you have for tailoring TxDOT's current rules governing its existing prequalification/pre-certification programs to the design-build CDA prequalification/pre-certification program?

C2. What categories of engineering services would you propose be included as categories for pre-certification for design-build CDAs?

C3. What qualification requirements would you propose be included for prequalification as a construction service provider for design-build CDAs?

D. One-On-One Meetings With Proposers

For large U.S. procurements, there has been success in the use of one-on-one meetings with individual proposers during the period prior to proposal submission. The intention of these meetings is to enable frank exchange of information, ideas, and concerns. To encourage such exchanges, TxDOT has sought to use appropriate safeguards during these meetings.

D1. Do you support one-on-one meetings (after shortlisting and before RFP issuance) for review and comment on draft procurement and contract related documents? Why or why not?

D2. For the kinds of projects that TxDOT is currently considering, how much time do you believe should be spent on this activity (that is, how many rounds of meetings between TxDOT and proposers are beneficial)?

D3. What subjects should be covered in one-on-one meetings?

D4. How can one-on-one meetings be organized to provide value to you, the proposer?

E. Project Definition/Status of Environmental Clearance

The procurement process defined in Section 1 above effectively assumes a relatively well-defined project (including environmental approvals) prior to initiating a procurement process.

E1. What are your views on waiting until a project is largely defined (including environmental approvals) before initiating a procurement process?

E2. To what extent should all projects be progressed to or near environmental approval before initiating procurement?

E3. To what extent are there circumstances under which TxDOT should seek proposals well before a project is environmentally cleared?

E4. Under what circumstances and to what extent would you accept the cost and schedule risk associated with environmental approvals (e.g., "sweat equity")?

F. Pre-Development Agreement

TxDOT and other U. S. public entities have entered into pre-development agreements with developers to utilize the private sector's innovative ideas related to project definition, delivery, and financing in order to finalize project scope. Examples of this approach are the original TTC-35 and current TTC-69 procurements.

F1. In what circumstances should TxDOT consider entering into a pre-development agreement with a developer?

F2. To what extent would you be interested in such a procurement? Why?

F3. Under what conditions would you offer "sweat equity" and other contributions in advance of a project proving feasible and ready to develop?

F4. Do you believe that the use of a pre-development agreement in the right circumstances captures private sector innovation in ways that it cannot capture with consulting resources and of sufficient value to outweigh the benefits to the public of a price-oriented competition?

G. Proposer Innovation

Through its CDA program, TxDOT seeks to capture private sector innovation, value and skills by using tools not available to it through its traditional procurement system. It does this in a variety of ways, including through the use of performance-based specifications and outcomes, among other tools.

G1. What can TxDOT do to encourage proposers bringing innovative ideas and other added value to the CDA procurement process?

G2. Is it possible to factor a proposer's innovative ideas into a procurement while still utilizing transparent selection criteria and achieving competitive pricing?

G3. Would you, as a proposer, prefer a procurement that brought you into the project development process well in advance of project feasibility or after a project's definition and feasibility was achieved? Why?

H. Alternative Technical Concepts (ATCs)

In the ATC process, proposers are given the opportunity to propose value-added enhancements that require, within carefully constructed bounds, TxDOT-approved deviations from technical requirements.

H1. To what extent do you support the "alternative technical concept" process as part of the procurement process for a concession CDA?

H2. If you support ATCs, do you believe the RFP should allow proposers to incorporate them into their base proposal or offer them as options to the base proposal?

I. Alternative Configurations - Risks & Processes

I1. To what extent would you welcome the opportunity to offer an alternative configuration to a project if it meant reopening an already-received environmental approval or supplementing an environmental document in a way that would require new public hearings and additional analysis?

I2. If you support being given the opportunity described in Question I1, would you accept the delay and cost risk at the time of your selection?

I3. In the situation described in Question I1, how do you believe a selection should be made among proposers?

J. Current and Potential Use of TIFIA and PABs

Through the Transportation Infrastructure Finance and Innovation Act ("TIFIA"), the United States Department of Transportation ("USDOT") provides credit assistance in the form of direct loans, loan guarantees, and standby lines of credit (rather than grants) to projects of national and regional significance.

TxDOT has been authorized, through FHWA's Special Experimental Project No. 15 ("SEP-15"), to carry out an experimental program for applying for credit assistance under the TIFIA program for up to three projects. Under this program, TxDOT would be the initial applicant for TIFIA credit assistance for a particular project. After review and approval of TxDOT's application, including a pro forma finance plan, FHWA would issue a conditional credit commitment for TIFIA assistance the successful proposer can use. The successful proposer would be given up to four months to close financing.

SAFETEA-LU authorized up to $15 billion in private activity bonds (PABs) to be issued for qualified highway or surface freight transfer facilities. TxDOT is preparing applications to the USDOT for several project-specific PAB allocations.

J1. As a proposer, how valuable to you are the TIFIA and PABs programs generally? Why?

J2. Do you find TxDOT's SEP-15 TIFIA program helpful? Why or why not? How could this system be improved upon?

J3. How should TIFIA be incorporated into the CDA procurement process outside of the process approved under SEP-15?

J4. Do you believe TIFIA and PABS will prove to be useful tools in connection with the financing of TxDOT toll concessions? Why or why not?

J5. Do you have any other suggestions for alternative approaches or refinements that would make TIFIA and PABs more useful?

K. Streamlined CDA Procurement Process

The procurement process for a CDA is a significant investment of time, energy, and resources - for both TxDOT and proposers. We are constantly seeking to vet our procurement requirements to ensure they capture value for the taxpayer without placing undue burdens on proposers.

K1. From a proposer's perspective, what opportunities exist to streamline TxDOT's current CDA procurement process or to render these processes more transparent, user friendly and/or efficient?

K2. Please comment on any specific submittal requirements or procurement requirements which are not necessary or the value of which is outweighed by the burden they create.

L. Internal TxDOT Project Development Procedures

When approaching the variety of potential projects that it could pursue, TxDOT must decide how, when and to what degree to develop a project in anticipation of a procurement for a CDA with a private developer.

L1. From what you have seen, is TxDOT using its resources (time and funds) wisely when preparing for CDA projects? Please give examples, if possible.

L2. How should TxDOT spend its limited resources to prepare projects for CDA procurements? What elements of project preparation are more important than others? What level of project development is appropriate before starting the procurement?

M. TxDOT Provision Of Data Mining Information

In order to ascertain project feasibility and to streamline the CDA procurement process, TxDOT has engaged its own consultants to perform traffic and revenue work for potential CDA projects. TxDOT provides the results from this work to project proposers so that each proposer is not required to duplicate these efforts. Additionally, TxDOT believes that this process avoids problems associated with proposers using disparate traffic and revenue data.

M1. From a proposer's perspective, is TxDOT's provision of data mining information helpful? Why or why not?

M2. How can TxDOT improve this process? How would these changes benefit the procurement?

N. Submission Of Preliminary Proposals Prior To Proposal Due Date

TxDOT is considering implementing a new step in the procurement process, wherein proposers could submit preliminary proposals before the proposal due date for review by TxDOT. The purpose of the review would be to determine responsiveness to the RFP requirements and screen for issues that might prevent a proposal from being placed in the competitive range. As part of this review, TxDOT would only contact proposers through written requests for clarification or written notices regarding issues that might prevent a proposal from being placed in the competitive range. TxDOT would not use this process to suggest improvements to a proposal or to take other actions that could be construed as negotiations. If used, TxDOT would fully describe the preliminary proposal submission and review process in the RFP.

N1. From a proposer's perspective, would a preliminary proposal submission process be helpful? Why or why not? What are the greatest benefits to this process? What are the greatest weaknesses?

N2. Assuming TxDOT includes the preliminary proposal submission process into its CDA procurements, what steps could TxDOT take to maximize the benefit of this process for proposers? Please be as specific as possible.

O. Master Utility Adjustment Agreements

Currently, in order to facilitate coordination of utility adjustment efforts, TxDOT's CDAs establish a system whereby a developer enters into a "Master Utility Adjustment Agreement" ("MUAA") with each impacted utility owner to address the specifics of its utility adjustments; TxDOT is not a party to these agreements. An MUAA can address one adjustment or a group of adjustments. If the parties need to address the adjustment of additional utilities, they amend the MUAA to include those additional utilities. The developer and the utility owners are free to determine between them which party is responsible for design and construction of each adjustment. TxDOT provides the forms to be used for the MUAA and amendments. A developer and a utility owner can negotiate changes to these forms, but TxDOT reserves the right to review and approve the final form of the MUAAs.

O1. From a proposer's perspective, do you find this process helpful? Why or why not?

O2. How can TxDOT improve this process to accommodate the needs and concerns of developers?

O3. To what extent should TxDOT be involved in the utility adjustment process?

O4. Instead of leaving a developer to enter into MUAAs with utility owners, should TxDOT enter into memoranda of agreement with affected utility owners prior to issuing an RFP, which would establish the utility owners' agreement to follow specified procedures and requirements during the adjustment process?

3. CONFIDENTIALITY/PUBLIC INFORMATION ACT

All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT in response to this RFI are, upon their receipt by TxDOT, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Chapter 552, Texas Government Code (the "Act"). Respondents should familiarize themselves with the provisions of the Act. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFI.

4. GENERAL INFORMATION

RFI Issuance Date: June 5, 2006

RFI Closing Date: July 3, 2006

TxDOT reserves the right to modify the above anticipated schedule milestones at any time and for any reason.

At its option, TxDOT may also elect to follow up directly with respondents with more detailed questions or to clarify submissions.

Point of Contact:

Mr. Ed Pensock, Jr., P.E.

Texas Department of Transportation

Director of Corridor Systems

Texas Turnpike Authority Division

125 East 11th Street

Austin, TX 78701

(Ph): (512) 587-1940

(E-mail): **epensoc@dot.state.tx.us**

Please send an electronic copy of your responses to this RFI to Mr. Pensock at the E-mail address referenced above. If for any reason you cannot submit your responses electronically, please send a copy of the responses to Mr. Pensock at the address above.

TRD-200603261
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 14, 2006

♦ ♦ ♦

Texas Water Development Board

Request for Proposals

The Texas Water Development Board (TWDB/Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.92, the submission of regional water planning proposals leading to the possible award of contracts to revise or update regional water plans as described in 31 TAC Chapter 357. In order to receive a grant, the applicant must be a political subdivision and must have been designated an eligible applicant by a regional water planning group as defined in 31 TAC §355.91. 31 TAC Chapter 355, Subchapter C provides guidance for regional water planning grants.

Description of Funding Consideration.

Total funding for activities related to the development or revision of a regional water plan shall not exceed 100 percent of the total cost of the planning for that regional water planning area as defined in 31 TAC §355.91. Funds awarded for grants under this request for proposals may total up to the amount of funds appropriated for such activities for the Fiscal Year 2006-2007 biennium. The following are the characteristics of activities, which will be eligible for funding:

1. Evaluation of new water management strategies in response to changed conditions;

2. Studies that will further implementation of recommended water management strategies;

3. Refinement of water supply information or water management strategies;

4. Activities that will help overcome problems from the last round of planning;

5. Further evaluation of water management strategies, especially regional solutions, to meet needs in small communities or rural areas;

6. Reevaluation of population and demand projections only under the presence of changed conditions;

7. Interregional coordination; and

8. Administrative and public participation activities.

Funding for administrative and public participation activities will be provided to all regions in order to obtain public input, provide notice, and amend plans, as necessary. Funding for other scope-of-work activities will be awarded on a competitive basis. In the event that acceptable proposals are not submitted or that insufficient funds are available to fund priority regional water planning tasks, the TWDB retains the right to not award contract funds. Additional funding to complete the 2006-2011 planning cycle will be awarded to planning groups in the fall of 2007 based on appropriations received for the regional water planning effort during the Fiscal Year 2008-2009 biennium.

Deadline, Review Criteria, and Contact Person for Additional Information.

Five double-sided copies and an electronic version of a complete regional water planning grant proposal must be filed with the Board prior to 5:00 p.m., September 14, 2006. Proposals must be directed either in person to Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, or by mail to Phyllis Thomas, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Proposals will be evaluated according to 31 TAC §355.94. All potential applicants may contact the Board to obtain these guidelines and specific scoring criteria or they may be obtained from the Texas Water Development Board's webpage at: www.twdb.state.tx.us. Requests for information, the Board's rules, and instruction sheet covering the research and planning fund, may be directed to Bill Roberts

at the preceding address or by calling (512) 936-0853, or by e-mail at bill.roberts@TWDB.state.tx.us.

TRD-200603279
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: June 14, 2006

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Request for Qualifications for the Selection of Arbitrage Compliance Service Provider

PURPOSE

The Texas Water Development Board (the "Board") seeks proposals in response to this Request for Qualifications ("RFQ") from firms with the qualifications and experience to provide arbitrage compliance and related services as required to ensure compliance with Internal Revenue Code section 148 and Treasury regulations promulgated therein ("Section 148").

It is the policy of the Board to make a good faith effort to include participation by Historically Underutilized Businesses (HUBs) in its contracts. HUB certified firms are for-profit business entities that are certified by the Texas General Services Commission, in accordance with that agency's rules found in Title I Texas Administrative Code §§111.11 - 111.28. HUBs and other minority and women-owned businesses capable of performing the scope of services described in this RFP are encouraged to respond.

TERM OF AGREEMENT

The contract term is to be for a two year period from September 1, 2006 to August 31, 2008, renewable, at the Board's option, for up to five years. The Board will provide notice of its decision to renew 30 days before the end of the then current contract term. The Board retains the right to negotiate all elements of the contract, including fees for renewal terms, if the renewal option is exercised. The Board also retains the right to terminate the contract for any reason and at any time upon the payment of then earned fees and expenses.

GENERAL INSTRUCTIONS

A brief transmittal letter may accompany each proposal, which summarizes the proposal's key points and must be signed by an authorized representative who is responsible for committing the firm's resources. There is a 20-page limit including attachments and the submitted proposal must be in hard copy (no fax or email). The minimum font size must be 12 point or larger. **Please restate the question at the beginning of each response and provide a separate section for that response, or indicate why no response is given.**

No joint proposals should be submitted. No oral interviews are expected to be conducted. **It is the expressed desire of the Board Members that arbitrage compliance service providers refrain from any contact or communication with members of the Board, key staff and our Financial Advisor or the undersigned regarding this RFQ until the selection process is completed.**

It is anticipated that the arbitrage service provider will be selected at the Board meeting on Tuesday, August 15, 2006. Responses are due on Monday, July 10, 2006 by 12:00 Noon. Six (6) copies of the proposal should be delivered as follows:

Texas Water Development Board

Stephen F. Austin Bldg.

1700 N. Congress Avenue, Room 516

Austin, Texas 78701

Attention: Ms. Veronica Hinojosa-Segura

Director, Debt & Portfolio Management

SCOPE OF SERVICES

1. Perform all required calculations including a calculation of arbitrage liability not less than annually for each issue of outstanding debt (the Board currently has 31 issues that require arbitrage calculations), and not less than semi-annually for the issues with a penalty election.

2. Create and maintain records necessary to determine arbitrage liability, if any, on outstanding obligations of the Board.

3. Review reports of investment and expenditure of bond proceeds, within the meaning of Section 148, as necessary to ensure compliance with Section 148.

4. Assist the Board in preparing or causing to be prepared any schedules, reports, or records necessary to perform or support a calculation of arbitrage liability.

5. Provide the Board a report of the calculations of arbitrage liability within 60 days after the end of each State's fiscal year.

6. Prepare transmittals and forms necessary to report and pay arbitrage liability on time.

7. Provide advice and recommendation as the Board may request concerning unique or extraordinary compliance issues that may arise from time to time.

FORM OF RESPONSE

1. Overview of the Firm

Provide a description of the firm, including general experience and history with arbitrage compliance, date founded, number of offices, location and number of professionals and employees in each office, total number of employees and professionals in the firm, description of practice areas in addition to arbitrage compliance services and firm philosophy. Indicate which office(s) perform arbitrage compliance work and will be responsible for day-to-day contact with the Board. Describe structure of firm ownership (e.g., publicly held corporation, partnership, etc.) and any parents, affiliates, or subsidiaries of the firm.

2. Qualifications

A. List the experience of the firm and/or the professionals proposed to be assigned to the Board in providing arbitrage compliance services. **Responses to this question should identify the client by name and state the number of bond issues covered by your retention. Also provide the type of bond issue(s) involved the par amount of the bonds, or other information relevant to establishing your firm's experience and expertise.**

B. Please describe your experience, if any, in assisting a client with an audit or other regulatory proceedings related to the services solicited by this RFQ.

3. Other Services

Please describe other services that your firm offers, such as underwriting, financial advisory services, investor relation programs, or investment of bond proceeds. Please describe your experience with such services.

4. Monitoring and Compliance Plan

Describe the steps your firm would take to assume and carry out the responsibilities of the Board's arbitrage compliance provider.

5. Resumes

Provide brief resumes for those individuals who would be assigned to serve the Board. Indicate the individual's years of experience in arbitrage work, public finance, licenses or certification. Specify who would be assigned as the primary contact for the Board.

6. Business Practices

A. Please describe your firm's experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm, in providing any professional services to clients or in operating your business.

B. Please describe efforts made by your firm to encourage and develop the participation of minorities and women in your firm's provision of arbitrage compliance and/or other professional services. Complete the table attached as Exhibit B.

7. Conflicts of Interest, Litigation, and Compliance History

A. Please disclose any conflicts of interest. Disclose all contractual or informal business arrangements/agreements, including fee arrangements and consulting agreements between your Firm and the Board, its staff and/or its Board, or any entity that provide services to the Board.

B. Please disclose any material litigation, administrative proceeding, violation of or investigation for, violation of any regulatory agency rules (SEC, MSRB, NASD, NYSE) in which your firm was involved, whether currently ongoing or concluded.

8. References

Provide names, addresses, and phone numbers of at least two references.

9. Fee structure

Provide your fee, by inserting a fee per calculation per issue in the appropriate column on Exhibit A.

PROPOSAL MODIFICATION

Any proposal may be modified or withdrawn at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date. The Board also reserves the right to make amendments to the RFQ by giving written notice to all firms who receive the RFQ and publishing notice thereof in the Texas Register.

COSTS INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required by the Board shall be the sole responsibility of, and shall be borne by, your firm.

BASIS OF AWARD

The Board will make its selection based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee for the mentioned services in Exhibit A.

Firms responding are encouraged to maintain a Texas office staffed with personnel who are responsible for providing services to the Board. By this RFQ, however, the Board has not committed itself to employ an arbitrage compliance consultant. The Board reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

The Board will not participate in any programs, nor will it conduct business, with any entity that is found to knowingly discriminate against persons on the basis of race, color, gender, age, and national origin, and religion, physical or mental disability.

EXHIBIT A

(Note: The Board currently has 31 issues that require arbitrage calculations.)

Description	Annual Fees Per Issue
Base Fee Per Computation Year:	
Additional Charges if any	
Debt Service Reserve Funds	
Commingled Funds	
Transferred Funds	
$100,000 Test for Debt Service Funds	
Variable / Floating Rate Bond Issue	
Yield Restriction Analysis / Yield Reduction Computation	
Universal Cap	
Calculation of Late Interest Amount	
Preparation of IRS Refund Request	
Penalty Calculations	
Other:	
Other:	
Other:	

EXHIBIT B

Please use this form to provide us with a breakdown of your company's workforce.

Total number of employees: _____

Males

Year	Category	Caucasian	Hispanic	Asian	Disabled	Other
2005	Executives					
	Professional					
	Clerical/Technical					

Year	Category	Caucasian	Hispanic	Asian	Disabled	Other
2004	Executives					
	Professional					
	Clerical/Technical					

Females

Year	Category	Caucasian	Hispanic	Asian	Disabled	Other
2005	Executives					
	Professional					
	Clerical/Technical					

Year	Category	Caucasian	Hispanic	Asian	Disabled	Other
2004	Executives					
	Professional					
	Clerical/Technical					

TRD-200603280
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: June 14, 2006

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Brazos Valley Council of Governments

Request for Proposal - Business Training Seminar Services

On June 13, 2006 the Brazos Valley Council of Governments (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposals (RFP) for Business Training Seminar Services. One or more trainers are needed to provide training to businesses and their staff in the Brazos Valley region (Brazos, Washington, Robertson, Burleson, Madison, Leon and Grimes counties). Workforce Solutions Brazos Valley Board will receive responses to the RFP until 4:00 P.M., CST, July 11, 2006. No responses will be accepted after this deadline. Potential respondents may view and print the RFP from the web at www.bvjobs.org. The contact person for this RFP is Anne McKibben, amckibben@bvcog.org, (979) 595-2800.

TRD-200603149

Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed:

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Request for Qualifications - Legal Notice

Policy Studies Inc. (PSI), on behalf of Workforce Solutions Brazos Valley Centers, seeks to procure agreements with one or more eligible vendors to provide temporaries who would perform specific duties related to a variety of workforce center operations.

To be eligible for consideration, vendors will be required to provide services as specified in the Request for Quotes.

Any agreement resulting from this request for quotes will remain in effect through June 16, 2007 and may be renewed annually. Workforce Solutions Brazos Valley or PSI reserves the right to contract with multiple vendors and makes no guarantee that services from your agency will be requested.

Vendors interested in receiving a mailed copy of the Request for Quotes may contact PSI's Employment Manager, Jill Bukowski at (303) 228-9160. Responses must be returned by 5:00 pm CDT on June 28, 2006 to receive consideration.

Issued By

Policy Studies Inc.

1899 Wynkoop Street, Suite 300

Denver, CO 80202

(303) 863-0900

TRD-200603147
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: June 12, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).